

Award No. 4217
Docket No. 4119
2-C&O-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region and Hocking Division)**

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated the current agreement, particularly Rule 154, when other than Carmen were utilized and repaired Car No. X1078, C&O Railway Company, Walbridge, Ohio.

2. That accordingly the Carrier be ordered to compensate Carmen T. J. Reamsnyder, M. W. Benton, C. D. Marsh and T. Gillette 8 hours each November 8, 1960, at the carmen straight time applicable rate of pay for the said violation.

EMPLOYES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier maintains a car repair shop at Walbridge, Ohio where freight cars, both wood and steel, are repaired. Carmen T. J. Reamsnyder, M. W. Benton, C. D. Marsh and T. Gillette, hereinafter referred to as claimants, are regularly employed at Walbridge Car Shop as carmen with assigned hours of 7:00 A.M. to 3:30 P.M., Monday through Friday, rest days Saturday and Sunday. On November 8, 1960 the carrier utilized or allowed Maintenance of Way Road Forces to repair Camp Car No. X1078 by installing new plywood floor while said car was located at Walbridge, Ohio. Fourteen pieces of plywood were used and nine employees of the Maintenance of Way Road Forces assigned to the car, participated in the work.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier all of whom have declined to make satisfactory adjustment.

The agreement effective July 1, 1921 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier erred on November 8, 1960, when it utilized or allowed other than carmen to repair Camp Car No. X1078, consisting of installing new plywood floor.

Therefore, the claim should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Camp Car X1078 which housed Carrier's Road Electrical Force was located on a siding at the Walbridge, Ohio Terminal.

Members of this Force undertook to install plywood flooring in the Car on their own time. The record is not conclusive as to where or how the material was procured.

This was Carmen's work, and the claim is based upon the Carrier utilizing or allowing another craft to do this work.

The question to be determined is whether the Carrier knew or should have known that this work was being done by the Road Force.

The first knowledge that the Walbridge Carmen had of the work was when informed of it by a pipefitter who had been properly sent to the Car to perform some work.

The Organization claims that the physical proximity of the subject Car to the Carrier's Mechanical Department was such that the Carrier should have been aware of what was occurring, and that it allowed or permitted the work.

This record is devoid of any actual knowledge of the work by the Carrier, or any circumstances which would charge the Carrier with knowledge of it until after the work had been accomplished. We do not feel that there was any intent by the Carrier to deprive Carmen of this work although it would appear that a proper policing of the controlling agreement by all concerned would do much to avoid this type of occurrence.

AWARD

Claim adjusted in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1963.