

Award No. 4305

Docket No. 4001

2-L&N-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly furloughed all motorized equipment operators at Birmingham (Boyles) Alabama, namely, C. D. Cook, C. A. Williams, E. D. Williams, D. G. Brown, and J. S. Troupe, and assigned their duties to employes of other Crafts, and

2. That accordingly the Carrier should be ordered to restore these motorized equipment operators to their positions and compensate them for all time lost subsequent to January 31, 1960.

EMPLOYES' STATEMENT OF FACTS: On January 27, Bulletin No. 42 was posted at Birmingham (Boyles Shops) Alabama, abolishing positions held by all motorized equipment operators, effective after working January 31, 1960.

Prior to the effective date of Bulletin No. 42, motorized equipment operators were assigned to operate Fordson and rotating boom tractors, motor cars, lift trucks, and other motorized equipment, as is shown in sample bulletin.

Subsequent to January 31st, the duties performed by motorized equipment operators were assigned to employes of other crafts.

Motorized equipment operators, C. D. Cook, C. A. Williams, E. D. Williams, D. G. Brown, and J. S. Troupe, hereinafter referred to as the Claimants, are listed on a separate seniority roster at Birmingham, captioned: "Tractor Operators". This complaint has been handled with the various officials of the Company, designated to handle such disputes, and all have declined to make any satisfactory adjustment.

The Agreement of September 1, 1943, as amended, is controlling.

POSITION OF CARRIER: It is carrier's position there has been no violation of the agreement in the handling given in this dispute.

The agreement of May 1, 1943, as referred to by the employes, was negotiated for the purpose of including those concerned under the provisions of the Shop Craft Agreement. At that time each of the employes had a full assignment of eight hours each, as set out in Rule 1. That rule clearly spells out that eight (8) hours constitutes a day's work. As of September 1, 1943, there were approximately 1347 employes at our Boyles, Alabama Shops. Of that number 594, including car inspectors, were in the car department. At that time major or heavy repairs were being made which necessitated the use of the type of equipment involved in this dispute. Today, there are 179 employes at Boyles, with 105, including inspectors, in the car department. However, there are only 26 carmen working in the area where trucks, etc., are in use and only 5 or 6 on duty at any one time making only light repairs.

A survey conducted at Boyles covering a period of 15 days shows an average of about **three hours per 24-hour period** for the combined operation of the Boom-tractor, Trackmobile, Ford truck, and Liftainer, with a far greater portion of this time being taken up by the Trackmobile. In connection with the Trackmobile, carrier wishes to emphasize that this type of equipment is of very recent origin and thus could not be considered as belonging to the craft set out in the agreement of May 1, 1943, as referred to in the foregoing.

Further, the modernization of the Boyles Shops and the introduction of the "pushbutton" facility has resulted in carrier having little need for the type of equipment formerly used. Stationary cranes and jacks installed at the point of repair have simplified the operation to such an extent that the car repairer seldom has to call for any other type of equipment.

With particular reference to the operation of the Ford truck: On September 13, 1960, carrier advised General Chairman Abner, I.B.F.&O., of the dispute now before the division. On October 20, 1960, he advised that he did not agree with General Chairman J. L. Bailey, B.R.C.A., that the operation of this piece of equipment violated the carmen's agreement.

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 employes 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.

As of January 31, 1960, carrier abolished the positions held by the five employes named in the claim before us. These positions, theretofore termed "Tractor Operators", had been covered as mentioned in Rule 142 of the applicable agreement effective September 1, 1943 (with revisions to February 1, 1952). This rule was adopted with an understanding between the parties which in part was as follows:

"1. That such employes shall be allocated to the craft in which the preponderance of their work is performed.

"2. That the present employes now carried on the separate seniority roster shall continue to maintain and accumulate seniority accordingly, and shall hold seniority rights in common with each other, as has been customary heretofore.

"3. * * *

"4. That after the present seniority roster has become exhausted of the employes carried on it at the effective date of this agreement, then, all vacancies which rate of pay is equivalent to that of a Helper or greater, shall be bulletined to the Helpers in the Craft in which the preponderance of their work is performed."

Pursuant to the above understanding, the claimants (each with seniority ante-dating the year 1943) were carried on a separate or "frozen" seniority roster under the designation "Tractor Operators", an example of such a roster, dated January 1, 1960, being included among claimants' exhibits of record. And they maintain that they were to continue to be carried on such "frozen" seniority roster as long as they continued in the service of carrier and that as such employes they would perform the work of their classification for any craft and would be allocated to and represented by the craft where the preponderance of their work was to be performed.

After abolishing their positions, it is alleged by claimants that the equipment, (referred to as "load Luger" in Rule 142, but called "Liftainer" by carrier in correspondence about the instant claim) was advertised to Laborers as being for use on "new" jobs under classification "Truck Driver—Laborer"; that the modified or remodeled motor vehicle given the name of "Trackmobile" was advertised to Carmen; that Carmen, Machinists, and other mechanics were assigned to operate the boom tractor as needed; and that the tractor with the lifting table, commonly called "Lift Truck", was "assigned to Storeroom Laborers for handling material and repair parts in the Shops and Yards". Claimants aver that by such action carrier arbitrarily divided duties previously performed by claimants and assigned those same duties to other employes for the sole purpose of liquidating the group of employes known as motorized equipment operators. The Claimants charge the action taken to be a violation of the agreement of the parties. This the carrier denies and marshals some evidence which purports to refute claimants' charge, but a search of the record does not disclose adequate nor convincing evidence as to the volume of work still available for motorized apparatus such as that manned by claimants before their jobs were abolished. No negotiations between the parties were had as authorized by Rule 145 nor was written notice given of the change here considered in accordance with Rule 146 and pursuant to Sec. 6 of the Railway Labor Act, as amended June 21, 1934. Therefore, we are of the opinion that this claim should be remanded for joint study by the parties to determine the amount of work available for positions such as those detailed in Rule 142 and discussed in correspondence of the parties concerning mutual agreement with reference thereto, so that any men entitled on the "frozen" seniority list of "Tractor Operators" may be retained pursuant to the original agreement in that regard.

AWARD

Claim remanded for compliance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1963.