

Award No. 4456

Docket No. 4134

2-RDG-CM-'64

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. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspectors Alfred Kleiner and Victor Gerace on Wednesday, September 21, 1960 were improperly denied their rights to perform work at Belmont, Philadelphia, Pennsylvania.
2. That accordingly the Carrier be ordered to make these employes, Alfred Kleiner and Victor Gerace whole by compensating them each 8 hours at the punitive rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Alfred Kleiner and Victor Gerace, hereinafter referred to as the claimants, are regularly employed at Belmont, and were available for the performance of the work in question.

September 20, 1960 a derailment occurred on the PRR Junction Railroad adjacent to Belmont Yard. While PRR Wreck Crew cleared up this derailment, they placed cars C&EI 65321, RDG 108422, ACL 53463, CG 7858, PRR 24986, RDG 33068, RDG 32185 on the adjacent spur track, a part of Belmont yard, Reading Railroad property.

The cars in question were, while on the spur track, inspected by Reading Railroad car inspectors Robert McGuire, and the claimants, who noted various defects and applied "Shop Tickets" to No. 16 shop Belmont yard, September 20, 1960.

Instead of sending the cars to the shop track; the carrier allowed PRR employes to come into Belmont yard and repair these cars while on the spur track, Reading Railroad, whereon they have no contractual rights to perform carman craft work.

The agreement effective January 16, 1940, as it has been subsequently amended, is controlling.

"As advised during discussion, the work performed by P.R.R. employees in the instant case was not work to which claimants here involved were entitled by agreement or practice in the industry. In fact, had the cars been offered in interchange they would not have been accepted by Reading Company and would have been returned to the P.R.R. for repairs.

"Accordingly, claim as here presented is unsupported by the applicable rules of agreement, is without merit and is therefore denied."

As was pointed out in handling and discussion of this claim on the property, the defects on the seven cars repaired at Belmont spur track by PRR carmen were of such a nature that the cars were not acceptable for interchange. I.C.C. regulations would not permit either offering or accepting the cars for interchange. Carrier maintains, therefore, that the necessary repairs were clearly the responsibility of the Pennsylvania Railroad and were properly effected by its employees on the Belmont spur track.

In handling its claim with carrier on the property, the organization did not specify or cite any rule of the collective bargaining agreement which it alleged had been violated but contended that, since the work was performed on Reading Company property, employees it represented that the contractual right to perform same. In view of the facts and circumstances of this particular case, carrier does not concur or agree with the contention of the organization and submits the repairs to the cars were the responsibility of the Pennsylvania Railroad. Cars were placed on the Reading property because of the physical characteristics of the railroad properties and the emergency occasioned by the derailment. It would have been unsafe and wasteful to have moved the cars back to PRR property for repairs and, as pointed out hereinbefore, the cars in question were not interchanged to Carrier until 2:00 P. M., September 21, 1960, after necessary repairs had been made. Then, and only then, did the cars become the responsibility of this carrier in the exercise of its common carrier functions.

Under all the facts in this case, carrier submits the claim for eight hours at punitive rate of pay for time not worked in behalf of regularly assigned carmen is not supported by any of the rules of the schedule agreement and the Board must, therefore, in the proper exercise of its statutory function, deny same in its entirety.

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 waived right of appearance at hearing thereon.

On September 20, 1960 a derailment occurred on the PRR, just adjacent to the Carrier's Belmont Yard. Seven of the cars, which were awaiting interchange from the PRR to Carrier, were placed on a spur track in the Belmont Yard of Carrier.

Claimants and Car Inspector McGuire placed "Shop Tickets" on these cars to Carrier's Belmont Shop No. 16. Meanwhile, PRR employes came on Carrier's property and effected repairs to these cars.

It is Claimants' contention that these cars were actually interchanged on September 20, 1960 when the shop tickets were placed on them.

Carrier contends that it could not, and would not, accept these cars prior to the work which was performed on them by the PRR employes, and the book interchange on September 21, 1960 at 2:00 P.M. was the time when the cars came under the control of Carrier.

The question to be determined is when did the actual interchange occur, since the controlling agreement can confer no rights on Claimants for work on cars which are not under the control of the Carrier and in its possession.

An examination of the record and the arguments advanced leads to the conclusion that the interchange took place when the cars were accepted by the Carrier on September 21, 1960, and until that time these Claimants could assert no right to the work on these cars.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.