

Award No. 4567

Docket No. 4292

2-AT-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. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

ATLANTA TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That it was a violation of the current Agreement for the Atlanta Terminal Company to request, order or permit Carmen employed by the Seaboard, Southern, Central of Georgia, and other railroads, to come into the Terminal and perform work contracted to Carmen employed by Atlanta Terminal Company.

2. That accordingly the Atlanta Terminal Company be ordered to discontinue these violations and compensate the following named Carmen employed by the Atlanta Terminal Company in the amount of hours pay claimed on these dates designated:

H. P. Waldrip	5 hours' pay	August 14, 1961
R. W. Davis	5 hours' pay	August 16, 1961
C. S. Davis	5 hours' pay	August 17, 1961
A. D. Wynn	5 hours' pay	August 22, 1961
A. C. Simpson	5 hours' pay	August 23, 1961
M. E. Chaffin	5 hours' pay	August 25, 1961
G. O. Dover	5 hours' pay	August 26, 1961
H. L. Peppers	5 hours' pay	August 29, 1961
A. C. Simpson	5 hours' pay	August 30, 1961
H. L. Peppers	5 hours' pay	August 30, 1961
M. E. Chaffin	5 hours' pay	September 1, 1961
G. O. Dover	5 hours' pay	September 2, 1961
J. A. Baker	5 hours' pay	September 3, 1961
H. P. Waldrip	5 hours' pay	September 5, 1961
H. L. Peppers	5 hours' pay	September 6, 1961
C. S. Davis	5 hours' pay	September 8, 1961
G. O. Dover	5 hours' pay	September 9, 1961

J. A. Baker	5 hours' pay	September 10, 1961
H. E. Adair	5 hours' pay	September 11, 1961
H. E. Adair	5 hours' pay	September 12, 1961
A. D. Wynn	5 hours' pay	September 13, 1961
H. L. Peppers	5 hours' pay	September 13, 1961
H. L. Peppers	5 hours' pay	September 13, 1961
M. E. Chaffin	5 hours' pay	September 14, 1961
G. O. Dover	5 hours' pay	September 16, 1961
H. E. Adair	5 hours' pay	September 16, 1961
C. S. Davis	5 hours' pay	September 17, 1961
H. E. Adair	5 hours' pay	September 19, 1961
A. D. Wynn	5 hours' pay	September 19, 1961
H. L. Peppers	5 hours' pay	September 20, 1961
A. C. Simpson	5 hours' pay	September 21, 1961
M. E. Chaffin	5 hours' pay	September 22, 1961
G. O. Dover	5 hours' pay	September 23, 1961
C. S. Davis	5 hours' pay	September 25, 1961
G. T. Peppers	5 hours' pay	September 26, 1961
H. L. Peppers	5 hours' pay	September 27, 1961
M. E. Chaffin	5 hours' pay	September 28, 1961
H. E. Adair	5 hours' pay	September 28, 1961
C. S. Davis	5 hours' pay	September 29, 1961
G. O. Dover	5 hours' pay	September 30, 1961
H. L. Peppers	8 hours' pay at rate of time and one-half	October 1, 1961
H. E. Adair	5 hours' pay	October 1, 1961
G. T. Peppers	5 hours' pay	October 2, 1961
H. P. Waldrip	5 hours' pay	October 3, 1961
H. L. Peppers	8 hours' pay at rate of time and one-half	October 4, 1961
H. F. Shedd	5 hours' pay	
A. C. Simpson	8 hours' pay at rate of time and one-half	October 4, 1961 October 5, 1961
C. S. Davis	8 hours' pay at rate of time and one-half	October 6, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	October 7, 1961
R. C. Cheek	8 hours' pay at rate of time and one-half	October 8, 1961
H. P. Waldrip	5 hours' pay	October 10, 1961
H. F. Shedd	5 hours' pay	October 11, 1961
G. T. Peppers	5 hours' pay	October 11, 1961

H. L. Peppers	8 hours' pay at rate of time and one-half	October 11, 1961
C. S. Davis	8 hours' pay at rate of time and one-half	October 12, 1961
H. E. Adair	5 hours' pay	October 12, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	October 13, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	October 14, 1961
G. T. Peppers	5 hours' pay	
R. C. Cheek	8 hours' pay at rate of time and one-half	October 14, 1961 October 15, 1961
M. E. Chaffin	5 hours' pay	
H. E. Adair	5 hours' pay	October 16, 1961
H. L. Peppers	5 hours' pay	October 17, 1961
H. P. Waldrip	5 hours' pay	October 17, 1961
H. L. Peppers	8 hours' pay at rate of time and one-half	October 17, 1961 October 18, 1961
G. T. Peppers	5 hours' pay	October 18, 1961
C. S. Davis	8 hours' pay at rate of time and one-half	October 19, 1961
G. T. Peppers	5 hours' pay	October 19, 1961
G. T. Peppers	5 hours' pay	October 19, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	October 20, 1961
M. E. Chaffin	5 hours' pay	October 20, 1961
H. P. Waldrip	5 hours' pay	October 21, 1961
H. F. Shedd	5 hours' pay	October 21, 1961
H. E. Adair	5 hours' pay	October 21, 1961
A. D. Wynn	8 hours' pay at rate of time and one-half	October 21, 1961
M. E. Chaffin	5 hours' pay	October 22, 1961
A. D. Wynn	5 hours' pay	October 24, 1961
A. C. Simpson	5 hours' pay	October 25, 1961
H. F. Shedd	5 hours' pay	October 25, 1961
H. L. Peppers	8 hours' pay at rate of time and one-half	October 25, 1961
C. S. Davis	8 hours' pay at rate of time and one-half	October 26, 1961

G. O. Dover	8 hours' pay at rate of time and one-half	October 27, 1961
R. C. Cheek	5 hours' pay	October 28, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	October 28, 1961
R. C. Cheek	8 hours' pay at rate of time and one-half	October 29, 1961
A. D. Wynn	5 hours' pay	October 31, 1961
A. C. Simpson	5 hours' pay	November 2, 1961
R. N. Oglesby	8 hours' pay at rate of time and one-half	November 2, 1961
C. S. Davis	8 hours' pay at rate of time and one-half	November 3, 1961
G. T. Peppers	5 hours' pay	November 3, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	November 4, 1961
R. C. Cheek	8 hours' pay at rate of time and one-half	November 5, 1961
H. P. Waldrip	5 hours' pay	November 6, 1961
A. D. Wynn	8 hours' pay at rate of time and one-half	November 8, 1961
A. C. Simpson	5 hours' pay	November 8, 1961
H. F. Shedd	5 hours' pay	November 8, 1961
H. L. Peppers	5 hours' pay	November 8, 1961
G. T. Peppers	5 hours' pay	November 9, 1961
C. S. Davis	5 hours' pay	November 9, 1961
A. C. Simpson	8 hours' pay at rate of time and one-half	November 9, 1961
G. O. Dover	5 hours' pay	November 10, 1961
C. S. Davis	8 hours' pay at rate of time and one-half	November 10, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	November 11, 1961
R. C. Cheek	8 hours' pay at rate of time and one-half	November 12, 1961
H. E. Adair	5 hours' pay	November 14, 1961
H. F. Shedd	5 hours' pay	November 14, 1961
G. T. Peppers	8 hours' pay at rate of time and one-half	November 15, 1961

R. N. Oglesby	8 hours' pay at rate of time and one-half	November 16, 1961
G. T. Peppers	5 hours' pay	November 16, 1961
H. F. Shedd	5 hours' pay	November 16, 1961
H. E. Adair	5 hours' pay	November 17, 1961
R. N. Oglesby	5 hours' pay	November 17, 1961
C. S. Davis	8 hours' pay at rate of time and one-half	November 17, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	November 18, 1961
M. E. Chaffin	8 hours' pay at rate of time and one-half	November 19, 1961
R. C. Cheek	5 hours' pay	November 19, 1961
A. D. Wynn	5 hours' pay	November 20, 1961
H. P. Waldrip	5 hours' pay	November 21, 1961
H. E. Adair	5 hours' pay	November 21, 1961
G. T. Peppers	5 hours' pay	November 21, 1961
H. L. Peppers	8 hours' pay at rate of time and one-half	November 22, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	November 24, 1961
R. C. Cheek	8 hours' pay at rate of time and one-half	November 25, 1961
H. E. Adair	5 hours' pay	November 25, 1961
G. O. Dover	5 hours' pay	November 25, 1961
R. C. Cheek	8 hours' pay at rate of time and one-half	November 26, 1961
H. L. Peppers	8 hours' pay at rate of time and one-half	November 29, 1961
G. T. Peppers	8 hours' pay at rate of time and one-half	November 30, 1961
H. F. Shedd	5 hours' pay	December 1, 1961
C. S. Davis	5 hours' pay	December 1, 1961
R. H. Oglesby	8 hours' pay at rate of time and one-half	December 1, 1961

R. C. Cheek	8 hours' pay at rate of time and one-half	December 2, 1961
G. O. Dover	5 hours' pay	December 2, 1961
G. O. Dover	8 hours' pay at rate of time and one-half	December 3, 1961
C. S. Davis	5 hours' pay	December 8, 1961
R. N. Oglesby	5 hours' pay	December 14, 1961
G. T. Peppers	5 hours' pay	December 14, 1961
C. S. Davis	5 hours' pay	December 15, 1961
R. N. Oglesby	5 hours' pay	December 15, 1961

EMPLOYEES STATEMENT OF FACTS: Each of the foregoing named claimants were off duty, available, ready and willing to perform the work here involved under the provisions of the controlling Agreement.

The Seaboard, Southern and possibly other carriers operating passenger trains through the Atlanta Terminal Company, Atlanta, Georgia, having eliminated many of their car inspectors and repairmen at passenger stations over their respective roads, thereby increasing the carmen's work required or necessary to be performed in the Atlanta Terminal. On or about August 14, 1961, while the local chairman was on vacation, the Atlanta Terminal Company requested or arranged for carmen employed by the Southern, Seaboard, Central of Georgia and Atlanta and West Point railroads to be sent into the Terminal to help inspect and repair their respective passenger, mail, baggage and official cars. Some days there would be one, two or more carmen from the above named carriers working in the terminal during a twenty-four hour period, midnight to midnight. October 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 25, 26, 27, 28, 29, 1961, November 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 24, 25, 26, 29, 30, 1961 and December 1, 2, 3, 1961, a carman from the Seaboard Railroad came into the terminal and performed carmen's work 8 hours, from 7 A. M., until 3:30 P. M., on each of these dates.

August 14, 1961 through December 15, 1961, one, two, three or four carmen employed by the above named railroads came into the terminal inspecting and repairing cars for one, two, three or more hours each date.

This dispute has been handled with the Atlanta Terminal Company's officers designated to handle such matters, in compliance with current agreement, all of whom have refused or declined to make or offer any kind of settlement.

The agreement effective March 16, 1945, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted the claimants have a contractual right to perform all work within the Atlanta Terminal Company recognized or classified as carmen's work, and said claimants should have been called or permitted to perform the work involved according to the provisions of applicable rules of said agreement, which are quoted for your ready reference:

In Second Division Award 3453, Referee Murphy, the board held:

"* * * This board lacks authority to direct a carrier as to how it shall conduct its operation; we only have authority to interpret and apply the agreements of these employees of which the Railway Labor Act gives us jurisdiction."

Thus, in view of the limitation placed on the board, it is without authority to do what is demanded in part 2 of the claim, i.e., order the terminal company to change its operation or operations of owner or tenant lines.

CONCLUSION: In conclusion, the terminal company submits it has shown that:

(a) The current agreement was not violated and the monetary claims are not supported by it.

(b) The point here at issue has long since been conceded by carmen and their representatives.

(c) The board is without authority to do what is demanded in part 2 of the claim, i.e., order the terminal company to change its operation.

On the record, the board cannot do other than make a denial award.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

From August 14, 1961, through December 15, 1961, certain Carmen's work was performed at the Atlanta Terminal by Carmen employed by the owner and tenant lines which utilize the Atlanta Terminal facility. (cf. p. 12 et seq. of Carrier's Submission for the detailed breakdown of the work performed.)

There is an agreement effective March 16, 1945 between the Atlanta Terminal Company and participating Labor Organizations, including the B.R.C.A.

Claimants are Carmen employees of the Atlanta Terminal Company, and they allege that the Terminal Company is in violation of the controlling agreement in permitting this work to be performed by others than themselves.

The Terminal Company's principal contentions are:

1.) the Terminal Company has no jurisdiction over the owner and tenant carriers' cars and locomotives, and therefore could grant the Carmen no right to work on such.

2.) That at the time of the execution of the controlling agreement, there had been a long standing practice that Carmen of the owner and tenant carriers worked on their respective equipment at the Terminal, and that the controlling agreement was executed in contemplation of this arrangement.

3.) That we are without authority to grant part of the relief sought in part 2 of the claim here presented.

At the outset, the Terminal Company has raised a procedural objection to our consideration of certain exhibits attached to the Employees' rebuttal statement. We uphold the objection to Employees' exhibits D, D-1, D-2, D-3, and D-4 for the reason that the matter contained therein was never submitted during the processing of this dispute on the property. Consequently, we uphold the Employees' objection to the affidavits attached to the Terminal Company's statement submitted at the referee hearing.

None of these items will be considered by us in the resolution of this dispute.

It is undisputed that the Terminal Company owns no locomotives or cars of its own. We are faced with the problem of why then do they employ, and have an agreement with, the Carmen. We are told by the Terminal Company that Carmen's duties at the Terminal consist of routine inspection of passenger, and express trains; applying ground steam connections; and as necessity arises and time permits, the making of light, limited or minor repairs to passenger train cars.

But if it is true, as argued by the Terminal Company, that it has no jurisdiction or control to grant Carmen work on the owner and tenant carriers' equipment, how does this above mentioned work inure to the Carmen employed by the Terminal Company?

The answer supplied by the Terminal Company is that the practice, both prior to and after the controlling agreement was executed, was to permit the owner and tenant lines employees to come on the Terminal property and perform work at their discretion.

We do not feel that the controlling agreement may be so lightly or capriciously treated as to provide only a tentative source of employment rights, dependent upon the wishes of parties outside the agreement. The Terminal Company could have and should have negotiated the agreement with the past practice in mind. Indeed, it is presumed that the execution of a written contract embodies the full understanding of the parties, and that any previous agreements or practices are considered merged in the understanding enunciated in the written instrument.

Rule 41 of the controlling agreement, relied upon by the Carrier reserves work to the crafts who are parties to the agreement and has no application to work performed by others alien to the particular agreement.

We are not to be understood as saying that necessary work detected at the Terminal cannot be taken from there to the particular Carrier's facilities, nor do we understand the Claimants as having made any such contention. But when Carmen's work, reserved to them under the controlling agreement is performed at the Terminal's facility, it is the work of the Carmen employed by the Terminal Company under the terms of that agreement.

We agree with the Terminal Company that as to the relief sought in

a part of the second claim of the Employees, we are without authority. Nowhere in the Railway Labor Act are we empowered to provide injunctive relief in the disputes which we are authorized to hear.

AWARD

Claim 1: Sustained.

Claim 2: Denied as to the mandatory relief requesting that we order a discontinuance of violations.

Sustained as to the compensation sought, except that it shall be at the pro rata rate as for a call.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July, 1964.

DISSENT OF CARRIER MEMBERS TO AWARDS 4567 AND 4568

The evidence of record reveals that prior to and when the agreement in evidence was negotiated and executed and throughout all the years it has been in effect, the established and recognized practice has been for carmen employed by the Terminal Company to inspect cars and trains, apply ground steam connections, cut steam connections, and from time to time make minor repairs to cars, primarily to avoid train delays, and for carmen of owner and the tenant line to service or make minor repairs to cars at the station, that the agreement was negotiated and executed in the light of this practice and that the practice was preserved by the following language in Rule 41 of the agreement:

"It is mutually agreed and understood that the work now being performed by the respective Crafts signatory to this agreement is properly recognized as the work belonging to the respective craft
* * * ."

It is true, as stated by the majority, that Rule 41 "reserves work to the crafts who are parties to the agreement," but it reserves to them only such work as they were performing at the time of negotiation and execution of the agreement. That was "the work now being performed" within the intent and meaning of these words as used in Rule 41. It definitely does not include work performed by owner and the tenant line carmen. Carmen employed by the Terminal Company have not been granted exclusive rights.

The monetary claims were based on Rule 7 of the agreement. This is not a penalty rule. It applies only when an employee is called or notified to return to work outside of his bulletined hours or on either or both of his assigned rest days. None of the claimants were so used. Furthermore, awards of the Board have held that the penalty work lost is the rate which an employee, if the work had been regularly assigned, would have received if he had performed it, i.e., the loss sustained is the value of the work if it were regularly assigned. This means that if the principles of prior awards are to be followed,

only the actual time consumed in performing the claimed work could constitute the extent of an agreement violation.

As Awards 4567 and 4568 are contrary to the agreement and other evidence of record, they are erroneous. We, therefore, dissent.

P. R. Humphreys

F. P. Butler

H. K. Hagerman

W. B. Jones

C. H. Manoogian