

Award No. 4676

Docket No. 4397

2-GRR-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 70, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

GEORGIA RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

(a) That under the controlling agreement the Georgia Railroad violated Rules 24, 25(a) and 96 when they denied car inspectors W. L. Hunter, W. J. Crawford, R. B. Thomas and Albert Hamm, who hold seniority at Lithonia, Georgia (Georgia Railroad), the right to work at that point, by arranging with management of the Atlanta and West Point Railroad to use car inspector E. E. Williams, who is an employe of the Atlanta and West Point Railroad and who holds no seniority on the Georgia Railroad, to perform the work formerly done by car inspector E. L. Rollins on the Georgia Railroad.

(b) That accordingly the Georgia Railroad be ordered to discontinue this arbitrary arrangement and to compensate the car inspectors listed above for all time lost as a result of the aforesaid action.

EMPLOYEES' STATEMENT OF FACTS: On August 2, 1961, a bulletin was posted by Mr. R. A. Parrish, Master Mechanic, Georgia Railroad, Augusta, Georgia, abolishing the assignment of car inspector at Lithonia, Georgia, formerly held by E. L. Rollins.

The assignment in question was not abolished. The bulletin as posted was part of an arbitrary arrangement between the managements of the Georgia Railroad and the Atlanta and West Point Railroad, whereby an employe of the Atlanta and West Point Railroad was to be used to do the work formerly done by car inspector E. L. Rollins.

On September 18, 1961, Mr. E. T. Andrews, Local Chairman, Brotherhood Railway Carmen of America, Augusta, Georgia, filed a time claim for car inspectors W. L. Hunter, W. J. Crawford and R. B. Thomas, who were employed by the Georgia Railroad, and held seniority at Lithonia and should have been called to perform the work formerly done by Car Inspector E. L. Rollins until proper assignment was made. On January 30, 1962, the rest days of Car Inspector W. L. Hunter were changed and he was no longer available

have modified a number of engine exhaust manifolds for Georgia Railroad by the application of spark arrester kits.

Since about January, 1957, Georgia Railroad has performed all freight, passenger and diesel wheel work for the Atlanta and West Point Railroad and The Western Railway of Alabama. Georgia Railroad also rebores diesel cylinder liners for A&WP - WofA and each shop at Montgomery and Augusta completely rebuilds spare diesel engines to make them available for either line's use when needed to replace an engine removed from service.

Various materials, including items repaired and salvaged, are exchanged between one line and the other.

Particular attention is called to the agreement of September 24, 1956. Paragraph III states there are no positions affected presently in the coordination of work involved and that it is anticipated there will be none. However, should such conditions later obtain, the following (Paragraph IV) will govern. Under Paragraph IV it is definitely understood and agreed by all concerned that the agreement of May, 1936, Washington, D. C., will fully apply to all those affected in the coordination of mechanical work. It is the position of the carrier that under this implementing agreement any claim growing out of the application of same must be handled with the Section 13 Committee, rather than by this division. The transfer of Car Inspector Williams to the minor portion of work on Georgia Railroad was done under the terms of this agreement and the terms of the agreement will have to be followed in a dispute of this kind. Therefore, we respectfully request that this claim be dismissed for lack of jurisdiction.

If, notwithstanding the above, this division determines to handle the case on its merits, then it is the position of the carrier that the general working agreement is superseded by the terms of the implementing agreement of September 24, 1956, and that it was entirely proper under the terms of this agreement to extend the territory of Car Inspector Williams to Georgia Railroad. The claimants involved in this case are regularly assigned employees of Georgia Railroad and are claiming time account not being used on their rest days. They have lost nothing by this transaction. In fact, no employee of Georgia Railroad has lost anything by the transaction.

There is no merit to this claim and it should be either dismissed or 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 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.

The Georgia Railroad, the Atlanta and West Point Railroad and the Western Railway of Alabama are separate railroads but operate under a common management which has headquarters in Atlanta, Georgia.

Each railroad has its own locomotives, cars, labor agreement, seniority roster, and accounting procedures. Each railroad also makes separate reports to the Interstate Commerce Commission.

On September 24, 1956, a Coordinating or an Implementing Agreement was negotiated among the three Railroads, supra, and System Federations No. 70 and 126. The purpose of the Coordinating Agreement was "to establish a more flexible and efficient arrangement for the maintenance of their locomotives, cars and other equipment", and to "plan coordination of car and locomotive department work" on the three contracting Railroads.

There is also a Labor Agreement — dated August 1, 1944, as amended — between System Federation No. 70 and the Georgia Railroad.

Throughout the remaining portion of our "Findings" we shall refer to the Georgia Railroad as the Carrier, whereas the other two Railroads — when mentioned — shall be given their full titles.

On July 31, 1961, Car Inspector E. L. Rollins, whose home station was the Carrier's facility at Lithonia, Georgia, but whose territory covered approximately 92 miles, retired.

On August 1, 1961, the Carrier assigned to Car Inspector E. E. Williams, an employe of the Atlanta and West Point Railroad, some 46 miles of Rollins' former territory. The remaining portion of Rollins' territory was assigned to a Carrier Car Inspector.

The Organization protested the Carrier's action and the claim was properly progressed to this Division.

The Carrier contends that, under the terms of the Coordinating Agreement, the assignment of a portion of Rollins' territory to Car Inspector Williams, was proper. The Carrier further contends, in its Ex-Parte Submission, that this Division lacks jurisdiction because all claims arising under the terms of the Coordinating Agreement must be progressed to the Section 13 Committee of the Washington Job Protection Agreement.

The Organization's position is that Car Inspector Williams held no seniority with the Carrier and that the Carrier's action violated Rules 24, 25(a) and 96 of the controlling Labor Agreement. The Organization further claims that this case does not fall within the scope of the Coordinating Agreement, because it is not a coordination issue inasmuch as the nature of the work involved was such that it could not be transferred.

The pertinent parts of the principal rules cited in this dispute are set forth below:

COORDINATING AGREEMENT

"II. Said coordination will be under the terms of the Agreement of May 1936, Washington, D. C.

III. There are no positions affected presently in the coordination of the work involved and it is anticipated there will be none. However, should such conditions later obtain, the following will govern:

IV. It is understood and agreed by all concerned that the Agreement of May 1936, Washington, D. C. will fully apply to all those

affected in this coordination of mechanical work between the carriers concerned herein.

V. Should a position or positions be transferred, the occupant or occupants of same will have prior rights to such position or positions, if they elect to transfer with their position or positions. Seniority of employes transferred shall be transferred to the point to which the position is moved and merged with names on the roster preceding the transfer in chronological order."

THE LABOR AGREEMENTS

"RULE 1 HOURS OF SERVICE

(1) Beginning of Work Week — the term 'work week' for regular assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes shall mean a period of seven consecutive days, starting with Monday."

"RULE 24 SENIORITY

(a) Employes in each craft covered by this agreement shall have system seniority in each of the following crafts, with separate rosters for mechanics and helpers:

1. Machinists
2. Boilermakers
3. Blacksmiths
4. Sheet Metal Workers
5. Electricians
6. Four subdivisions of Carmen, as follows:
 - (a) Patternmakers
 - (b) Upholsterers
 - (c) Painters
 - (d) Other Carmen"

"RULE 25 ASSIGNMENT OF WORK

(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft except Foremen at points where no mechanics are employed."

"RULE 96 CLASSIFICATION OF WORK

Carmen's work shall consist of building, maintaining, dismantling * * * and inspecting all passenger and freight cars, * * *"

First, this Board must answer the Carrier's jurisdictional challenge wherein the Carrier claimed that this dispute arose under the terms of the

Coordinating Agreement and, therefore, in keeping with the provisions of that Agreement, this dispute must be progressed to the Section 13 Committee of the Washington Job Protection Agreement.

There is considerable evidence, however, that this case is unquestionably within this Board's jurisdiction.

In sound and well-reasoned Award 3587 this Board ruled that "Neither Section 13 nor any other provision of this Agreement" (Washington Job Protection Agreement of May 1936) "purports to divest this Board of its jurisdiction to hear and determine a dispute between an employe and a carrier growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions as established in Section 3, First (i) of the Railway Labor Act, as amended".

In Award 3587, this Board further held that, "The Washington Job Protection Agreement does not supersede the seniority rule. Its fundamental purpose is to provide allowances to employes affected by coordination. Section 13 refers to the mode of determining disputes arising 'in connection with a particular coordination'".

Regarding the reported "transfer of work issue", Section V of the Coordinating Agreement, in part, provides:

"Should a position or positions be transferred, the occupant or occupants of same will have prior rights to such position or positions, if they elect to transfer with their position or positions."

It is difficult, however, to see the applicability of Section V, *supra*, to the instant case, because the "occupant" of the position in question was retired, not transferred, and hence he was unable to exercise his prerogative to transfer with the position. Furthermore, the position itself had not transferred. In addition, Car Inspector Rollins' seniority had also terminated with his retirement. Therefore, Section V, *supra*, has no relevancy to this case.

If Section V is not applicable, then the Coordinating Agreement has no pertinency to this case, and the Labor Agreement of the Carrier and System Federation No. 26 is the controlling document.

It is again important to note that the three railroads share a common management, but each railroad has its own locomotives, cars, labor agreement, seniority roster and accounting procedures. Therefore, each railroad must be considered to have its own employes — separate and distinct from those of the other railroads participating in the Coordinating Agreement.

Since the seniority provisions of the Carrier's Labor Agreement are intended to protect the employes of that railroad, it becomes obvious that if the work of a retired Carrier employe could be contractually assigned to an employe of another railroad — even a railroad participating in the Coordinating Agreement — the basic protective seniority provisions of the controlling Labor Agreement are being nullified.

Consequently, we must hold that the Carrier violated the Labor Agreement.

Regarding the compensation aspects of Part (b) of the claim, the record fails to provide any information on which an accurate determination can be

made by this Board. Furthermore, the Board believes that to remand the case to the property would not be as efficient and as effective a method of disposition as is desirable. Consequently, the Board rules that the three Claimants (W. J. Crawford, R. B. Thomas and Albert Hamm) must be compensated at the rate of one hour pro-rata pay per day from the first day the violation occurred until the violation is corrected. The compensation of one hour pro-rata pay per day must be totalled and then equally divided among the three claimants.

The Board's disposition, in this case, is without prejudice to the merits of any other compensation claims.

AWARD

Claim (a) — Sustained.

Claim (b) — Sustained in accordance with findings set forth above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.