Award No. 4681
Docket No. 4446
2-AT-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. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

ATLANTA TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

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 and Southern Railroads to come into the Terminal and perform work contracted to Carmen employed at 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 the dates designated:

G. O. Dover	5 hours pay	April 28, 1962
C. S. Davis	5 hours pay	May 3, 1962
H. P. Waldrip	5 hours pay	May 7, 1962
A. D. Wynn	5 hours pay	May 7, 1962
H. E. Adair	5 hours pay	May 7, 1962
H. E. Adair	5 hours pay	May 14, 1962
A. C. Simpson	5 hours pay	May 17, 1962
H. E. Adair	5 hours pay	May 21, 1962
C. S. Davis	5 hours pay	May 24, 1962
G. O. Dover	5 hours pay	May 26, 1962
G. T. Peppers	5 hours pay	May 30, 1962
G. T. Peppers	5 hours pay	June 6, 1962
A. C. Simpson	5 hours pay	June 6, 1962
G. O. Dover	5 hours pay	June 10, 1962
J. A. Baker	5 hours pay	June 10, 1962
H. P. Waldrip	5 hours pay	June 12, 1962
G. O. Dover	5 hours pay	June 16, 1962

EMPLOYES' 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.

In Third Division Award 6828, Referee Messmore, it was held that:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employes arise by reason thereof, this Division is without authority to correct them as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.

'The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance.' See Awards 3523, 6018, 5040, 5976."

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 employes 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. Employes of the terminal company have the right to perform only such work as the terminal company has to offer.

(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 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.

The Carrier, the Atlanta Terminal Company, is jointly owned and jointly used by the Southern Railway Company, the Central of Georgia Railway Company, and the Atlanta and West Point Railroad Company under a tenancy

agreement. At the time the complaint was filed, 24 inbound trains and 23 outbound trains used the Carrier's facilities daily.

The Carrier does not own or operate locomotives, cars or trains; nor does it conduct switching operations for tenant lines.

From April 28, 1962, through June 16, 1962, certain Carmen's duties were performed at the Atlanta Terminal Company by Carmen employed by the tenant lines.

The Organization contends that it has a contractual right to perform all work recognized or classified as Carmen's work within the facilities of the Atlanta Terminal Company.

The Carrier contends that it "can offer to its carmen only such work as its owner and tenant lines authorize or permit to be performed by the terminal company". The Carrier further contends that "Throughout all the years" (prior to having a labor agreement with the Organization) "owner and tenant lines have had full access to and use of the terminal company's facilities, and have inspected, serviced and repaired cars at the station at their discretion".

The Labor Agreement dated March 16, 1945, is controlling in this dispute.

We have studied and evaluated Second Division Award No. 4567 — which involves the same Parties and facts nearly identical with the instant case.

In Award 4567, the Board held, in part, as follows:

> "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 employes 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 agreement 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 understoood 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."

The Board is convinced that Award No. 4567 is well reasoned and sound. Therefore, it should be followed.

This Board, however, has no authority to grant the injunctive relief sought by the Organization in a portion of Part 2 of the claim. Accordingly, we sustain Part 1 of the claim and deny that portion of Part 2 of the claim wherein injunctive relief is sought.

Regarding the penalty aspects of Claim 2 — the compensation sought shall be at the pro rata rate but only for the actual work time involved in performing the claimed work.

AWARD

Claim 1: Sustained.

Claim 2: a) Sustained as to the compensation sought, except that it shall be at the pro rata rate but only for the actual work time involved in performing the claimed work.

b) Denied as to the request that the Board order a discontinuance of the violations.

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.

DISSENT OF CARRIER MEMBERS TO AWARD 4681

In this dispute Carrier's action was strictly in accordance with the applicable Agreement, and the claim should have been denied.

The evidence of record reveals that prior to the time the Agreement between the parties was negotiated and executed the long established and recognized practice had been for carmen employed by the Terminal Company to inspect cars and trains and perform other work which they could perform, and that historically carmen of the owner and the tenant lines have made repairs at the station upon their Carrier's equipment.

This practice was recognized and preserved by the parties in their negotiations prior to the time the present Agreement was executed, and Rule 41, which is controlling, was provided to guarantee that the existing practice would continue; and it has been understood throughout the years by the parties that the Terminal Company employes would continue in the work they were performing at the time the Agreement was reached between the parties and that the tenant lines may continue in using their own employes to make car repairs.

A reading of the scope rule (which is a standard scope rule on most, if not all, Carriers) and the evidence of record show that the Terminal Company could not possibly do all the work contained in Rule 58, for the evidence of record shows that the Terminal Company has never performed all the work, does not have the necessary employes to do the work, and does not have the necessary tools, parts, or heavy equipment required to perform car repairs.

The burden of proof falls upon the petitioners, and they have offered none. The majority has blindly followed a prior erroneous award, which was not based upon the record but upon an opinion that the claimants should be allowed to do the work. We have no authority to base our decisions upon personal opinions when are opinions are not supported with evidence.

The Employes do not claim that the carmen employed by the Terminal Company can do all the work contained in Rule 58, yet this award so allows and thereby fails to recognize the impossibility for the Carrier to comply with this absurd finding.

For the reasons herein presented and the additional reasons as set forth in our dissents to our Awards 4664 and 4567, we dissent to this award.

P. R. Humphreys

H. F. M. Braidwood

F. P. Butler

H. K.Hagerman

W. B. Jones