Award No. 4690
Docket No. 4455
2-L&N-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. 91, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated the current agreement in assigning Stores Department Laborers to operate "lift trucks" in the handling of material and repair parts about the shops and yards at Evansville, Indiana.

2. Accordingly, the Carrier should be ordered to restore this work to the Carmen's Craft and additionally compensate carmen assigned to the miscellaneous overtime board at the overtime rate of pay for all time such employes are used in this capacity, subsequent to March 1, 1962.

EMPLOYES' STATEMENT OF FACTS: Since "lift trucks" were placed into service at Evansville, Indiana many years ago, members of the carmen's craft (Carmen or Carmen Helpers) have been used in the operation of such equipment for the purpose of distributing and/or handling material and repair parts about the shops and yards, as well as in the performance of other duties related to their craft.

Due to the defective condition of the lift truck which had been in use for some time, a new lift truck was sent to Evansville during the latter part of February, 1962.

Effective March 2, 1962, company officials assigned stores department laborers to operate this lift truck in the handling of material and repair parts in and about the shops and yards which is work that has always been performed by the carmen's craft.

After stores department laborers began operating the lift truck, time claims of two hours and 40 minutes each, at punitive rate of pay for Carmen N. V. Hicks, C. D. Hunter, Eugene Burton, W. G. Mitchell, N. V. Hicks and Clifton Hunter, and one for 5 hours at punitive rate of pay for Carman K. E. Beeker, all of whom were the first available men on the miscellaneous overtime board, respectively, on March 2, 7, 13, 14, 15, 16, and 12, 1962 were filed by the local committee. These were the dates and amounts of time that stores department employes had been used to operate the lift truck at the

The use of the battery-powered, hand-operated piece of equipment was nothing more than the procurement of any other tool for that is only what the equipment is—a tool to be used just the same as a power saw, wrench, hammer, or any similar tool. It is not only used by the clerical force but also by various classes of shopmen or others who are in need of its services.

Carrier submits that there is no basis for this claim and that it should be 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 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.

Since this Division has now given Third Party notice to the Brotherhood of Railway and Steamship Clerks, Freight Handlers and Station Employes, the present dispute may now be considered on its merits.

At the Carrier's Howell Shops at Evansville, Indiana, at the time of the grievance, there were two lift trucks. One was a gasoline, engine-powered, table-lift truck with a capacity of 3 to 4 tons which was ridden and controlled by the operator. The other was a newly-purchased (February 1962) battery-powered, hand-operated, fork-lift truck with a capacity of approximately 2 tons. The latter truck's controls were located at the top of a T-shaped handle which the operator manipulated as he walked ahead of the truck.

The gasoline truck was operated by a Carman whereas the battery-powered truck was operated by a Stores Department employe.

The Organization contends that prior to March 2, 1963, Carmen or Carmen Helpers were used to operate lift trucks in the Mechanical and the Stores Departments, because the preponderance of the work "of handling material and repair parts about the shops and yards" was in the Car Department. The Organization further contends that the lift trucks performed "identical services" and that Rule 142 of the controlling Labor Agreement—as well as its agreed-to interpretation—supports the Organization's position.

The Carrier, on the other hand, contends that the lift truck in question is a portable piece of equipment and that "No operator is assigned to any of these portable machines as they are used by anyone needing to make a move". The Carrier further contends that "Rule 142 of the current rules agreement captioned 'tractor operators' . . . does not apply to the operation of equipment of this sort".

Rule 142 reads as follows:

"TRACTOR OPERATORS

The positions of tractor operators, with movable and stationary booms, and operators of tractors with lifting table, load luggers,

motor car operators, (engaged in handling material and repair parts in shops and yards) employed in mechanical and stores departments, will be covered by the rules of this agreement and will be represented by the craft to which assigned."

In Third Division Award 10014, of which it was said at the Referee Hearing that there was "no relief for the Organization in that case", is one of the determining factors in the dispute before us. Award 10014 is concerned with the same Carrier as herein involved and with the Brotherhood of Railway and Steamship Clerks, Freight Handlers and Station Employes. In that dispute, the Carrier assigned the operation of a lift truck—which had been operated for many years by a member of the Clerks' Organization—to a Carman Helper.

It is especially significant to note in Award 10014 that immediately after citing Rule 142 (the same Rule that is involved in the dispute before us) the Carrier states: "Clearly, the carrier acted properly in assigning the operation of this lift truck to the class of employes to whom it belonged in accordance with the existing agreement". The "class of employes to whom it belonged" is the Carmen.

Other significant comments and statements offered by the Carrier in support of its position in Award 10014 are as follows:

> "In handling this dispute on the property the employes laid great stress on the fact that for a number of years an employe covered by their agreement had been assigned to operate the lift truck in question. This carrier does not deny. (sic) However, **where an agreement is specific in setting out the type of work belonging to a given class of employes,** practice does not control." **(Emphasis ours.)**

> "It is the opinion of this carrier that the employes should be thankful that **for so many years one of their class occupied a position which did not belong to them by agreement, in fact was specifically covered by another agreement."** (Emphasis ours.)

Thus, in two separate cases of basically related factual situations involving Rule 142, supra, the same Carrier has presented two diametrically opposed defenses. This is both inconsistent and illogical.

Since the Board is in agreement with the position taken by the Carrier in Award 10014 and with the Carrier's resultant interpretation of Rule 142—the Board rules as follows:

1. That the movement of tubs, parts and materials about the yard by means of lift trucks, is work properly belonging to the Carmen Craft;

2. That Stores Department employes may properly use and operate lift trucks when handling Stores Department materials around their own shop;

3. That the penalty requested by the Organization must be in accordance with the specific claim presented by the Organization on the property and not according to the amended, general claim presented to this Division. Therefore, the Carrier is directed to reimburse—at the pro-rata-rate—the original seven named Claimants (as specified on Page 2 of Organization's Exhibit A) as set forth below:

CLAIMANT	CLAIM DATE	TIME CLAIMED
N. V. Hicks	March 2, 1962	2 Hours & 40 Minutes
C. D. Hunter	March 7, 1962	2 Hours & 40 Minutes
K. E. Beeker	March 12, 1962	5 Hours & 40 Minutes
Eugene Burton	March 13, 1962	2 Hours & 40 Minutes
W. G. Mitchell	March 14, 1962	2 Hours & 40 Minutes
N. V. Hicks	March 15, 1962	2 Hours & 40 Minutes
Clifton Hunter	March 16, 1962	2 Hours & 40 Minutes

AWARD

Claim 1 sustained.

Claim 2 sustained in keeping with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1965.