



Award No. 4803

Docket No. 4747

2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Carmen)**

**CHESAPEAKE AND OHIO RAILWAY COMPANY
(SOUTHERN REGION)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chesapeake and Ohio Railway Company violated the provisions of the current agreement, particularly Rules 154, 156 and 32, when it assigned, permitted or allowed Conductor A. W. Wilson to perform the work of oiling journal boxes on caboose at Handley, West Virginia, August 28, 1963.

2. That accordingly the Chesapeake and Ohio Railway Company be ordered to compensate oiler and packer Jack S. Arbraugh, Handley, West Virginia, eight (8) hours August 28, 1963, at the oiler and packer time and one-half applicable rate of pay account of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, owns and operates a facility consisting of a transportation yard, repair tracks and diesel house at Handley, W. Va., at which it employs a number of carmen and oilers and packers. Trains arrive and depart from the transportation yard and carmen employes are assigned around the clock and work three shifts inspecting, repairing and maintaining freight cars and diesel units.

Jack S. Arbraugh, hereinafter referred to as the claimant, is employed by the carrier as oiler and packer at Handley, W. Va., holding seniority as such under the provisions of Rule 31 of the shop crafts agreement. On August 28, 1963, Caboose No. 90210, was at Handley Yards and in need of repairs, such repairs as servicing and oiling journal boxes. Conductor A. W.

had no knowledge. As a result, we are of the opinion that no penalty is justified in the instant case."

By the same logic the instant case should be denied. It would be inequitable and unwarranted to hold the carrier responsible for Conductor Wilson's unauthorized actions of which it had no knowledge. Such adjustment as was indicated was taken care of by carrier's instructing train and engine crews to notify the proper authorities of any equipment maintenance necessary, and not to take it upon themselves to do that which brought forth this instant claim.

The claim is unrealistic on another basis. It is contended that Claimant Arbaugh should have been called out on his rest day to do the work performed by the conductor. If the work had been performed by the carman craft, it would have been handled by those already on duty as the amount to be done was trivial. Furthermore, even if Arbaugh had been called for the work in question, he would have been paid 4 hours at straight time rather than 8 hours at time and one half rate.

The claim is without merit on all counts, and 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.

This claim is based upon an asserted violation of the Carmen's Agreement, by reason of a conductor adding oil to the journal boxes on his caboose at Handley, West Virginia. This operation took about ten minutes to perform.

It is not denied by the Carrier that the work done by the conductor at Handley is carmen's work. The Carrier merely pleads that the conductor performed the work of his own volition and without direction of anyone in authority.

We can see no merit in this claim. There is no doubt that the conductor performed this work without any direction from Carrier supervisors. Carrier received no particular benefit by reason of the conductor performing the work involved since if it actually had to be performed at Handley it could have been performed easily by carmen who were stationed around the clock at the point and who actually observed the claimant in the act of lubricating the journal boxes.

This case is not analagous to that involved in Award 3406 where the Board concluded that the circumstances involved in a conductor spending four hours painting the floor of a caboose were such as to give rise to an inference that the Carrier acquiesced in the conductor's conduct and accepted

the benefit thereof. Clearly, no such inference can be raised on the facts of this case.

AWARD

Claim (1) and (2) Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1966.