Award No. 4807
Docket No. 4760
2-WT-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. 106, RAILWAY EMPLOYES' DEPARTMENT, A.F. of L.-C.I.O. (Carmen)

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the controlling agreement, and particularly Rule 88 was violated when on July 5, 1963 the work of cleaning cars was assigned to other than employes of the Carmen's Craft on a continuing basis.

2. That accordingly, the Carrier be ordered to return the work of cleaning cars to members of the Carmen's Craft and compensate the senior laid-o Car Cleaners for each day since July 5, 1963 and until such time that the work is returned to employes of the Carmen's Craft.

EMPLOYES STATEMENT OF FACTS: The senior furloughed car cleaners hereinafter referred to as the claimants hold seniority with the carrier and as such have an employe relationship with the Washington Terminal Company, hereinafter referred to as the carrier.

On June 26, 1963, the carrier posted notice to Car Cleaner, J. B. Elder of the 3 to 11 shift, that effective 11:00 P.M., E.S.T., Thursday, July 4, 1963 that his position would be abolished account of service requirements.

Effective July 5, 1963, the work of cleaning cars in the warehouse of the carrier's property located in tracks 1 thru 6 was turned over to employes of the Railway Express Agency without notification, understanding or agreement with the carmen's organization. On July 31, 1963 the claimant's general chairman filed a grievance and claim with the carrier's car foreman, requesting that the work of cleaning cars in the warehouse be returned to car cleaners and compensate the senior laid-off car cleaner at the rate of eight hours pay for each day since July 5, 1963 on a continuing basis. On August 27, 1963 the carrier's car foreman replied and denied the grievance and claim, stating that the Railway Express Agency had notified the carrier that effective July 1, 1963 it no longer desired this service and would have whatever work of cleaning cars as was necessary performed by their own employes. On September 16, 1963 the claimant's general chairman replied to the carrier's denial of August 27, 1963 and notified of rejection of it's car foreman's decision. On September 16, 1963 the claimant's general chairman

other carriers after discontinuance of the agreement or arrangement, no matter what was the motive or reason for the discontinuance."

Third Division Award 6210: "Enough has been said to demonstrate that work performed by the Claimant employes at Eastwicks prior to April 1, 1947, existed by virtue of the Carriers' contract of September 1, 1904 with The Baltimore and Ohio Railroad Company. So long as that contract remained in effect the Organization was entitled to all of the work growing out of the same, which the Carrier had and which was within the Scope Rule of the Agreement between the Carrier and the Organization. But since the work existed only by virtue of the Carrier's contract with The Baltimore and Ohio, it ceased to exist when that contract came to an end. Had the Carrier's new contract with The Baltimore and Ohio provided that the interlocking and signal work should be supplied by the Carrier, the Claimants would have been entitled to it, but the Organization has no right to dictate the terms of he contract between the two railroad companies. See Awards 643, 2425, 4353 and 5878."

Third Division Award 9580: "The work involved herein admittedly is that of the Reading Transportation Company. Its performance by Carrier's employes was by consent of the Transportation Company in accordance with an arrangement agreed to by the Transportation Company and the Carrier. Its removal by the Transportation Company did not violate the Agreement between the Reading Company and the Clerks' Brotherhood. Consequently the claim will be denied in its entirety."

Third Division Awards 3450, 5774, 6210, 8417 and 9004 are also pertinent.

In summation, the carrier has shown that the work involved in this dispute is work over which The Washington Terminal Company has no control and cannot grant to its employes. The carrier further has shown that neither Rule 88 nor any other rule of the Agreement grants to car cleaners employed by The Washington Terminal Company the exclusive right to perform all work involved in the cleaning of cars on The Washington Terminal Company property. Additionally, the carrier has shown that awards of the National Railroad Adjustment Board support the carrier's position in this dispute.

In view of all the foregoing, the carrier submits that the claim should be denied in its entirety.

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 because of turning over work of cleaning the interior of cars used exclusively in express traffic to employes of the Railway Express Agency.

It appears that under the Standard Express Operations Agreement effective March 1, 1954 between certain carriers and the Railway Express Agency it is provided:

> "The interior of cars used exclusively for express traffic or any movement shall, after release from load, be cleaned and refuse disposed of by and at the expense of the Express Company."

To meet its responsibility under the 3/1/54 Agreement the Railway Express Agency arranged with this carrier to have the work of cleaning the interior of the cars and disposing of refuse performed by Washington Terminal employes. In June of 1963 the Railway Express Agency notified Washington Terminal that effective July 1, 1963 it would undertake to clean cars which arrive at Washington in exclusive express service.

It is difficult to see any basis for this claim. The Carmen's Agreement is with the Washington Terminal Company. As a matter of general principle it covers all work of the craft which the Washington Terminal Company has need to have performed. So long as the Railway Express Agency contracted with the Terminal to perform the car cleaning work involved the carmen had a right to perform it. However, when the Railway Express Company decided that it no longer desired to have its work done by Washington Terminal Company insofar as this carrier is concerned the work disappeared. Consequently, the "Scope" of the Washington Terminal's Agreement with its employes could not attach it.

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.

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