

Award No. 4818

Docket No. 4786

2-GM&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'

DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly removed Carmen's work from under their jurisdiction and assigned the work to other than Carmen.

2. That accordingly, the Carrier be ordered to make the Carmen's Craft whole by additionally compensating Carmen E. E. Fortner in the amount of twenty-four (24) hours at the time and one-half rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Carman E. E. Fortner, hereinafter referred to as the claimant, is employed by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, at Frascatti Shops in Mobile, Alabama.

In the early part of 1963 the claimant was assigned to, and did build six trucks consisting of two axels and four wheels each. The frames were built of channel and angle iron which the claimant laid out, cut and welded in place. He performed all the work in construction of these trucks except the precision drilling, shafting and bearings. He spent approximately twelve hours in making each of these trucks.

These trucks were used in the freight car re-building program at Frascatti. They were used as temporary trucks under the car frames while they were undergoing re-building process.

The first part of August 1963, the carrier determined that two additional trucks were needed. It then assigned machinists to take the pattern that claimant had made, and construct the two additional trucks.

This dispute has been handled with carrier officials up to and including the highest officer so designated by the company, with the result he has declined to adjust it.

The agreement effective January 1941, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: Carmen have always performed the work of

The claim is totally without merit and 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 waived right of appearance at hearing thereon.

In the early part of 1963 the claimant, an employe covered by the Agreement between the Carrier and the Brotherhood Railway Carmen, was assigned to and did build six structures to be used in the rebuilding of some of Carrier's composite box cars except for the precision drilling, shafting and bearing, which work was assigned to the Machinists. The foundation of the structure is on wheels and is movable. The top portion of the structure would revolve so that work to be done was made more accessible. On the first of August, 1963, the Carrier determined that two additional structures of this type were needed and it assigned Machinists to construct them. This, the Carmen, contend deprived them of the work which was properly their's under their Agreement with Carrier.

It is the contention of the Carrier that the structure is basically a "jig" or tool and the real purpose of it is not because it is movable as the foundation is on wheels but that the real purpose of the tool is in the use of the circular portion at the structure, two of these "jigs" being used on one center sill. Carrier further contends that the building of shop jigs is not the exclusive work of any craft.

To the contrary, Petitioner maintains that what we are dealing with in this controversy is the construction of a "temporary truck" or "dolly"; that such work is reserved to Carmen under Rule 504 of the Agreement and that part of Rule 508 which reserves to Carmen; "All other work generally recognized as Carmen's work". Petitioner further stresses that Carmen have always built and repaired any freight car trucks whether for temporary or permanent use; that these structures were used as temporary trucks to hold the car frames while they were undergoing a rebuilding process and, finally, that Carrier itself considered this as the work of Carmen by the assigning of the building of these first six temporary trucks to them.

Petitioner having asserted that the structures involved herein were temporary trucks and that the Carmen had the exclusive right to build them has the burden of establishing such assertion.

We must establish, primarily, just what a truck is. The word truck is derived from the Greek "trochos" meaning a wheel and has been defined in Webster's Collegiate Dictionary as a "Small heavy rectangular frame supported on four wheels for moving heavy objects". It would appear, therefore, from the record, that at least one of the main purposes of the structures involved was the moving of heavy objects.

After having reviewed the record, the Board is convinced that Petitioner has sustained the burden of proving the claim of a violation by the Carrier of the Agreement by a fair preponderance of the evidence.

However, Carrier also contends there can be no monetary award as Claimant was not available, as he was steadily employed elsewhere while the last work on the two structures was being done in August 1963 and, consequently, suffered no loss of earnings.

As it took twelve hours time to construct one temporary truck, Claimant was deprived of twenty-four hours work that he might otherwise have performed by virtue of Carrier's assigning this work to Machinists and was thus deprived of work which Carmen were rightfully entitled to. What is being award here is for compensatory damages and is not a case in which Carrier is being "penalized" for a rule infraction. The many Awards which hold this Board has no authority to assess a penalty to enforce an agreement are, therefore, not relevant. Claimant will be awarded 24 hours pay at the pro rata rate.

See Award 3405-(Carey); 4489-(Seidenberg); Third Division Award 11701-(Engelstein); Third Division Award 13832-(Wolfe).

A W A R D

The Claim is sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1966.