

Award No. 4827

Docket No. 4656

2-GN-CM-'66

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)
GREAT NORTHERN RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Carmen are being improperly assigned to remove end slope boards from 72000 series gondola cars.
2. That accordingly the Carrier be ordered to compensate Carman Llewellyn Riendeau for eight (8) hours' pay, at the straight time rate, for each day, for the periods of September 17, 1962 through September 21, 1962; September 24, 1962 through September 28, 1962; October 1, 1962 through October 5, 1962; and every day thereafter that this violation continues.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains car repair facilities at Grand Forks, North Dakota.

Carman Llewellyn Riendeau, hereinafter referred to as the claimant, holds seniority as a carman at Grand Forks, North Dakota, but on the date of the violations was furloughed. The claimant was included in a force reduction on June 21, 1962, but was the oldest available furloughed carman who could have been recalled to service to perform the work in this dispute.

Carrier owns and maintains a series of gondolas which we will refer to in this dispute as '72,000 series' gondola cars.

This series of gondola cars is different from the regular gondola cars in that they have four (4) long narrow doors, on each side of the car, which run parallel with the track, and are situated between the freight car trucks. The bottom of the gondola car immediately above the freight car truck is solid. The sides of the gondola car have slots on them which are formed by riveting two angle irons approximately 3 inches apart. Slope boards approximately 2" x 8", the width of the car, are inserted into these slots when this car is to be used for hauling road gravel.

**THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT
MERIT FOR THE FOLLOWING REASONS:**

1. It is the fundamental right of the carrier to assign the work in question in whatever manner is necessary or desirable, unless the power to make such decisions has been limited by law or by some clear and unmistakable language in a collective bargaining agreement.
2. The organization bears the burden of proving that it has secured the exclusive right to remove slope boards and gravel from 72000 series gondola cars by clear and unambiguous contractual language.
3. Rules 42(a) and 83 contain no language whatsoever which supports the organization's contention that carmen mechanics have the exclusive right to perform the work in question.
4. Previous similar cases based on language essentially identical to Rules 42(a) and 83 have been rejected by this Board.
5. The work in question does not require the skill, training and experience contemplated by Schedule Rule 82.
6. The assignment of the work in this case was consistent with all relevant past practice, and the two isolated incidents involved in the organization's allegations concerning past practice are not comparable because the cars were in the immediate vicinity of the car department repair track.

For the foregoing reasons, the carrier respectfully requests that the claims of the employees 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 employee or employees involved in this dispute are respectively carrier and employee 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 Employees' Submission they state:

"The primary issue in this case is to determine whether or not the end slope boards are an integral part of this car. If so, the carmen are granted the right to remove and install these slope boards under Rules 83 and 42(a)."

Commenting upon the carrier's asserted right to assign its employees and conduct its business except as limited by statute or agreement they say:

"The Organization is well aware of the 'basic legal principle' asserted by the carrier and would not be before this Board if we were not of the firm belief that the controlling agreement here in point prohibits Carrier from using section men to dismantle integral parts of a car."

The basic issue, therefore, is whether the end slope boards are integral parts

of the gondolas, so that their removal constitutes "dismantling * * * freight cars," within the meaning of Rule 83.

In Award No. 1393 this Division said:

"To 'dismantle' means to break down, strip, deprive or divest of equipment; or to remove the main fixtures of a machine."

The removal of loose boards to prepare the cars for actual use would hardly seem to constitute their dismantling. These gondolas are used for hauling both gravel and sugar beets. When used for gravel, slope boards are inserted into angle iron slots welded to the cars' sides in such positions at car ends that the gravel will not fill the lower part of the cars above the trucks, but for dumping will tend to flow by gravity toward the dump doors between the trucks. The slope boards are not fastened so as to become part of the cars, but merely rest in the slots and are apparently held there by their own weight and that of the commodity carried.

The cars are prepared for hauling sugar beets, a commodity of greater bulk and less weight, by merely removing the slope board from the slots, so that the entire volume of the cars can be used.

In Award No. 4515, where the issue was the carmen's right to repair, as integral parts of freight cars, the racks fastened thereto for the hauling of automobiles, this Division sustained the claim; for although the racks could be detached, they were securely fastened. The same is true of the angle iron slots, which are welded to, and made part of, these gondolas. But it is not true of the slope boards, which are not fastened to the cars.

In Webster's Third New International Dictionary "integral" is defined as "of, relating to, or serving to form a whole; essential to completeness; organically joined or linked; constituent; inherent."

The slope boards are not constituent, inherent or organically joined or linked to the gondola; they are not essential to its completeness; they do not serve to form the car, which is obviously complete without them. They are inserted or removed to prepare the cars for the efficient handling of the specific commodity to be immediately handled.

In Award No. 33 this Division held without a referee:

"Other than carmen may prepare cars for melon loading but shall not be permitted to perform repair or maintenance work, within the meaning of Rule 107 of the current agreement."

Somewhat similar holdings were made in Awards Nos. 1933 and 2797, where the work concerned only preparing cars for immediate use, and not their actual building, maintaining or dismantling, or the removal or addition of their essential parts.

The Employees cite two occasions upon which local management at Grand Forks acceded to carmen's demands that section men should not perform this work; but that is not sufficient to establish a general practice or an authoritative interpretation binding upon the Carrier.

A W A R D

Claim denied.

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

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 11th day of March, 1966.