

Award No. 5168

Docket No. 4981

2-NOPB-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NEW ORLEANS PUBLIC BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, the Carrier improperly assigned other than Carman to perform carmen's work on Engine No. 44 on July 7, 1964, and
2. That accordingly the Carrier be ordered to additionally compensate Carman A. A. Armond for four (4) hours at time and one-half rate for said violation.

EMPLOYEES' STATEMENT OF FACTS: The New Orleans Public Belt Railroad Company, hereinafter referred to as the carrier, maintains a force of carmen who are assigned to positions covering carrier's operation twenty-four (24) hours per day, seven (7) days per week, at a number of locations in the shops and yards at New Orleans, Louisiana.

Carrier's carmen employees are covered by one seniority roster. Carman A. A. Armond, hereinafter referred to as the claimant, is listed on the seniority roster and was available and willing to perform the work subject to dispute.

For many years prior to October 5, 1959, carmen were assigned to the engine house. On that date, Carrier abolished the last of the carman positions assigned at the Engine House and from that time to the present carrier uses carmen assigned at other locations within the seniority point to perform the carmen's work at the engine house.

On July 7, 1964, Blacksmith W. J. Melan assisted by painter M. G. Lablanc were used to replace defective front coupler in engine no. 44. Claim was timely filed and properly handled with officers of the carrier up to and including the highest designated officer, all of whom have declined to adjust it.

The Agreement effective March 16, 1947, as subsequently amended, is controlling.

POSITION OF CARRIER: This claim is based on the use of employes of other crafts to perform carmen's work at our machine shop. There is not sufficient work to justify employing a carman at carrier's machine shop; therefore, carrier assigned a painter and a blacksmith to perform the work in question. Painter M. G. LeBlanc, who assisted or performed this work, is classified in Rule 78 and belongs to the carmen's organization.

The organization has admitted that the four hours' overtime claimed is only their estimate of time required to make the repairs. Even if this claim was valid, which carrier does not concede, it should not be for payment at the overtime rate.

The fact that there is insufficient work to justify employing a carman at this point has not been disputed by the organization.

Carrier takes the position that Article VII, carrier's proposal No. 23 of agreement dated August 21, 1954, is controlling in this case and respectfully requests your honorable board to decline this claim.

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.

The claim is that Carrier violated the controlling Agreement by using a blacksmith and a painter to perform carmen's work at the Engine House at New Orleans.

It is generally true, of course, that a carrier is not at liberty to have carmen's responsibilities discharged by non-carmen. The parties in this case, however, have agreed to a rule that reads as follows:

"At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

Apparently the parties have recognized that there is insufficient work to justify employing a carman at the Engine House since no carman has been regularly assigned there since October 5, 1959. Petitioner contends, however, that Carrier's entire operations, including the Engine House, Shops, Repair Tracks and Yards at New Orleans, constitutes a single point. The Agreement itself does not define the word, "points," as used in the Rule and no past practice has been brought to our attention that would be helpful in that regard.

Without additional evidence, there is no realistic basis for concluding that Carrier's operations at a number of locations in a large city area com-

prises a single point. The mere fact that all of Carrier's Carmen are carried on one seniority roster does not mean that only one point exists.

It is for Petitioner to establish the essential elements of its claim which in this case includes supplying sufficient facts to show that the Engine House was not a point "where there is not sufficient work to justify employing" a Carman.

On the basis of this record, we are not in a valid position to uphold Petitioner's contention and must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1967.