



Award No. 5227
Docket No. 5062
2-C&O-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. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carman Raymond L. Adkins and Carman Helper James Crawford's service rights and rules of the controlling agreement were violated on December 31, 1964 when other than carmen were permitted or allowed to perform carmen and carmen helpers' work in violation of Rules 32, 154 and 156.

2. That accordingly, the Carrier be ordered to additionally compensate Carman Adkins, four hours at the carman applicable straight time rate and Carman Helper Crawford, four hours at the carman helper applicable straight time rate for said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Raymond L. Adkins and Carman Helper James Crawford, hereinafter referred to as the Claimants, are regularly employed as such by the Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, at Raceland, Kentucky with a work week Monday through Friday, first shift, rest days Saturday and Sunday.

The Carrier owns and operates a large facility at Raceland, Kentucky known as the Russell Car Shops, where a large number of carmen and carmen helpers are employed and hold seniority under the provisions of Rule 31 of the Shop Crafts' Agreement.

The Carrier's Russell Car Shops is operated on a pre-determined basis and the employees assigned to complete a certain number of units or pieces and/or a certain number of cars for an eight hour shift.

On December 31, 1964, the Carrier had a box car repair program in process at the Car Shop. The cars enter on Track No. 1 with first stop in the Burner Shop, then proceed through the Erecting Shop and into the Paint Shop, where they are completed. The cars were not moving through the shop as fast as the Carrier's Foreman expected, and instead of adding additional

loss. There is no contention that the circumstances were such on any of the six occasions that an additional telephone maintainer would have been necessary if the supervisor had not performed the item of work claimed, and no claim is presented by such other telephone maintainer. The claims must be denied."

Based upon the foregoing, the following conclusions should be drawn:

(1) The claim should be dismissed under the doctrine of Third Division Award 11372 as no claim by or on behalf of the "employee involved" has been presented as required by Rule 35.

(2) The claim is without justification on its merits, the Carrier having shown:

- (a) That Rule 32(b) specifically provides that foremen may perform work in the exercise of their duties.
- (b) That Foreman Workman performed work on an instructional basis on December 31, 1964, in keeping with the intent of Rule 32(b).
- (c) That Second Division Award 1677 involving this Carrier and the same System Federation supports the Carrier's position here.
- (d) That Claimants could have suffered no loss even if the foreman had violated the agreement (which Carrier denies) being on duty and under pay at the time of the incidents in dispute.
- (e) That the attempt to extract a penalty where none is provided in the Agreement is not within the Board's jurisdiction.

On all bases the claim fails. It should be denied.

All data herein submitted in support of Carrier's position has been presented to the Employees or duly authorized representatives thereof and made a part of the question in dispute.

(Exhibits not reproduced.)

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 were given due notice of hearing thereon.

The instant claim rests on Petitioner's contention that a foreman violated the Agreement by performing carmen's work at Carrier's Russell Car Shop at Raceland, Kentucky.

There is no question but that the foreman performed production work on December 31, 1964, that belongs to carmen and carmen helpers. Carrier contends that no more than ten minutes time was devoted to that work and that it was done only for instruction purposes. In support of its position, Carrier has presented a particularized, consistent and reasonable factual description of the work and production process involved in this dispute.

Petitioner's evidence consists of a general statement, signed by six employees, reading as following in its entirety:

"We, the undersigned observed Foreman, Jim Workman engaged in the manuel [sic] work of the Carmen Craft between the hours of 7 A. M. and 11 A. M. on December 31, 1964."

This statement is conclusory in form and substance. It does not furnish the specific observations as to the nature, background and amount of the work involved, even when considered in connection with the submissions, that would enable this Board to evaluate the evidence and overrule Carrier's quite specific presentation.

It is not unreasonable or inconsistent with any of the rules called to our attention for a foreman to perform a small amount of manual work to correct and instruct employes under his supervision and to demonstrate new techniques. We are not disposed to upset this principle in the absence of a clear affirmative contractual provision to the contrary.

We have carefully examined the record and are not satisfied that, in performing the work in controversy, foreman Workman did more than instruct an employe in the work at hand in the course of his supervisory duties. There is no evidence that the force of carmen and carmen helpers was inadequate or that any employe lost employment or compensation as a result of the disputed work.

The claim will be denied.

See Awards 1224, 1677 and 4086.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5227

The Employees' Statement of Facts reads in pertinent part as follows:

" * * * * *

* * * The cars were not moving through the shop as fast as the Carrier's Foreman expected, and instead of adding additional men to perform the work, the Carrier's Foreman James Workman proceeded to perform work himself of applying plate under floor stringer and applied the angles which holds the plate, using key bolts and keys. After applying parts to the car, the Carrier's Foreman Workman assigned carmen to drive rivets, carman helper heating the rivets and Foreman Workman himself secured tools and performed carmen helper's work of bucking the rivets.

* * * * *

Statement signed by six employees (Employees' Exhibit B) reads as follows:

"February 2, 1965

Mr. A. C. Shumway
Local Chairman
Lodge No. 344

Dear Sir:

We, the undersigned observed Foreman, Jim Workman engaged in the manuel work of the Carman Craft between the hours of 7 A. M. and 11 A. M. on December 31, 1964."

The referee stated the following in his findings:

" * * * There is no evidence that the force of carmen and carmen helpers was inadequate or that any employe lost employment or compensation as a result of the disputed work."

This dispute was not predicated on the basis as stated by the referee; it was predicated on the basis that Rule 156 was violated, and the claim should have been sustained on that basis.

O. L. Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger