

Award No. 5249

Docket No. 5114

2-C&O-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(SOUTHERN REGION)**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chesapeake & Ohio Railway Company violated the provisions of the current controlling agreement, particularly Rules 32 and 154 and Article III of the September 25, 1964 Agreement, when it assigned or permitted other than carmen to perform carmen's work on caboose 90975 on April 22, 1965, Peach Creek, West Virginia.

2. That accordingly the Chesapeake & Ohio Railway Company be ordered to compensate carmen P. E. Hale and Elmo White four (4) hours each at the carmen's applicable time and one-half rate of pay account of said violation.

EMPLOYES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, owns and operates a facility consisting of a Transportation Yard, Repair Track and Roundhouse or Diesel House at Peach Creek, West Virginia, where a number of carmen and carmen helpers are employed. Trains arrive and depart from the Transportation Yard and carmen are assigned around the clock, three shifts, inspecting, repairing and maintaining freight cars, diesel units and cabooses.

Carmen P. E. Hale and Elmo White, hereinafter referred to as the claimants, are employed by the Carrier at Peach Creek, West Virginia and hold seniority as such under the provisions of Rule 31 of the Shop Crafts' Agreement.

On April 22, 1965, caboose 90975 was at Peach Creek Yards and in need of repairs, such repairs as stoves, lamps, lamp brackets, towel and cup dispensers to be supplied. Conductor C. A. Blankenship and Brakeman Boyd Damron, informed the claimant P. E. Hale of the repairs necessary to be made and the claimant notified the Carrier's Car Foreman Edward White that caboose 90975 was in need of these repairs, the Carrier's foreman began using profane language and refused to assign carmen to make these necessary repairs. After

(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 employe or employees 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 predicated on the allegation that the Carrier violated the Carmen's Agreement when the train crew men made minor repairs and servicing to the stove gate, towel and cup dispenser and lamp and lamp bracket in the caboose. Such minor repairs and servicing were done by the train crew, but without the knowledge or authority from the Carrier. The conductor and brakeman did this on their own volition.

The mere fact that the necessity for the repairs and servicing were reported to the Car Foreman does not compel him to issue immediate orders for the work, nor does it constitute authority to anyone to do so. No emergency was involved. The work, if needed, could have been done by Carmen at a more convenient and propitious time.

There is no showing that there was any intent to deprive Carmen of this work and there is no inference that the Carrier acquiesced in conduct by the conductor and brakeman.

This case is analagous to those involving the same parties in Awards 4217, 4566 and 4803 where the claims were denied. We are obliged to affirm that the claim in this case also is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1967.