



**Award Number 5866**

**Docket Number 5613**

**2-SLSW-CM-'70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Carmen)**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That Carrier willfully violated the rules of the current controlling agreement when they arbitrarily assigned one Carman Welder on the 7:00 to 3:00 P.M. shift, and one Carman Welder to the 3:00 P.M. to 11:00 P.M. Shift in the Tool Room at Pine Bluff, Arkansas.
2. That the Carrier therefore be ordered to advertise both assignments under the provisions of rules of the current agreement.

**EMPLOYEES STATEMENT OF FACTS:** The St. Louis Southwestern Railway Lines, hereinafter referred to as the Carrier, maintains in its heavy repair and rebuild shops, known as the Car Department Back Shop, at Pine Bluff, Arkansas, a Tool Room, where tools used by the Carmen are serviced and repaired, and where a stock of tools is maintained and checked out to the men. For many years one assignment, advertised as Lead Carman in the Tool Room, worked in this special facility, until some time in 1963 when two additional assignments were placed in the Tool Room, one working with the regularly assigned Carman from 7:00 A.M. to 3:00 P.M., and one working from 3:00 P.M. to 11:00 P.M. At that time when the Local Chairman verbally handled with General Car Foreman G. C. Martin, he responded by advising him that the assignments were placed there for a specific purpose, and that he could pull them out at any time, which he did. Then intermittently from that time until some time in January, 1966, the assignments would be made and pulled out of the Tool Room when the dispute over advertisement would come up. In January, 1966 when the two assignments were placed back in the Tool Room, the Local Chairman handled for advertisement with J. Y. Allen, Jr., who was then Assistant Mechanical Department Superintendent in charge of Car Section. Mr. Allen retaliated by pulling out six air jacks of 50 Ton capacity which were in this facility for repairs and sending them to Impact Tool Company, Houston, Texas for the necessary repairs. Claim was made for Carman L. C. Eubanks, who was regularly assigned to the Tool Room, for a total of 60 hours at time and one-half rate. Carrier agreed to pay the claim for a total of eight hours at straight time rate for each jack, amounting to \$145.33, and this offer of settlement was accepted by the Organization on September 1, 1966. Follow-

ing further handling to have the assignments in the Tool Room advertised, formal written request was filed on September 12, 1966, with the General Car Foreman, asking that the two assignments be bulletined, and when he failed to reply to the Local Chairman's letter, it was turned over to the General Chairman, who subsequently appealed the request to the highest designated officer of the Carrier, who has declined to settle the matter. The agreement effective November 1, 1953, as subsequently amended is controlling.

**POSITION OF EMPLOYEES:** It is submitted that under the rules of the current controlling agreement, particularly Rule 12-1, Carrier was obligated to bulletin the two Tool Room assignments.

Rule 12-1 reads:

"12-1. Any vacancy or new job established will be bulletined to employees in the subdivision of the respective Crafts in which the vacancy occurs or new job is established, with copy to employees in other subdivisions of the same Craft at the point involved. Bulletin must be posted for five (5) days before such position is filled permanently. Successful applicant will be assigned within ten (10) days from date of bulletin. An employee desiring to avail himself of this rule will make application to the official in charge, with copy to Local Chairman. The senior employee holding seniority in subdivision where such new job or vacancy occurs shall if sufficient ability is shown by a fair trial, be given preference in filling such new job or vacancy as a mechanic or helper in Craft and subdivision affected. If no bids received from employees in the subdivision where position is established or vacancy occurs and no one to be recalled under the provisions of Rule 18-4, the senior applicant from other subdivisions in the Craft involved at point employed will be assigned, if sufficient ability is shown by a fair trial. A man employed to fill a vacancy or new job pending advertisement and assignment in a craft having subdivisions will not establish seniority until regularly assigned. An employee exercising his seniority rights under this rule will do so without expense to the carrier."

It is submitted that these two assignments were new jobs within the meaning and intent of the above quoted rule, and that senior Carman should have been offered their rights under the contract to bid on the jobs. Instead Carrier assigned Carman Welder L. H. Moore to the 7:00 A.M. to 3:00 P.M. shift, and Carman Welder J. W. Caldwell was used on this shift when Carman Moore was not available. Carman Welder F. M. Phillips, regularly assigned to the second shift Back Shop force, working from 3:00 P.M. to 11:00 P.M., was placed in the Tool Room on the second shift, and worked it until March 1, 1967 at which time he exercised his seniority as Carman Welder in the Back Shop on the 7:00 A.M. to 3:00 P.M. shift. Carrier then placed Temporary Promoted Carman Apprentice J. P. Merritt, who holds no seniority as a Carman, on the second shift Tool Room assignment vacated by Carman Welder Phillips. Carrier thus deprived Carman senior to these four employees of their rights to hold such assignments.

Attached hereto and identified as Exhibit No. 1, is copy of seniority roster of Carman employed at Pine Bluff at the time these assignments were made in the Tool Room, and you will note that Carman Welder Moore, with seniority date of 3-13-59, was 142 on the seniority roster, Sheet 5 of Exhibit No. 1, and with deductions for leaves of absence and Foremen, left 121 men older than he eligible for these assignments. You will also note that Lead Carman assigned to the Tool Room, L. C. Eubanks was the oldest Carman working at Pine Bluff at the time these assignments were

made. Carman Welder Caldwell, with seniority date of 9-13-64, was 197 on the seniority roster, and with deductions for leaves of absence and Foremen, left 172 Carmen older than he eligible for these assignments. Carman Welder Phillips, with seniority date of 8-3-62, was 165 on the seniority roster, and with deductions for leaves of absence and Foremen, left 143 Carmen older than he eligible for the assignment. Temporary Promoted Carman Apprentice J. P. Merritt held no seniority whatsoever as Carman, and therefore with the deductions necessary for leaves of absence and Foremen, there were 204 Carmen eligible, since 231 are shown listed on this roster.

Carrier maintains that Carmen Welders used on occasion in the Tool Room are regularly assigned in the car shop. Carmen Welders regularly assigned in the car shop, work on the line welding on cars being repaired or rebuilt, and are paid a differential for working as welders, and when men bid in Carmen Welder's jobs in the Back Shop, they expect to be assigned to welding on the line and any other work incidental to their work as Carmen Welders. The two men who have been regularly placed in the Tool Room bid on jobs advertised as Carmen Welders, and were assigned to them. There is no Carman Welding required of these employes used in the Tool Room, and they are not used out on the line with other Carmen Welders performing welding. To substantiate this, I have statements signed by Carmen who have worked in the Tool Room on these assignments in addition to statement of Lead Carman L. C. Eubanks, who bid in vacancy created in the Tool Room by the death on December 24, 1945 of Lead Carman assigned at that time. Statement of Lead Carman Eubanks confirms that the employes placed in Tool Room in 1966 worked with him performing the same duties he was performing, and that at no time while they were working with him were they moved outside, performing any other duties than those performed by Lead Carman in the Tool Room. Statement of Carman Welder F. M. Phillips, confirming that sometime prior to February, 1966, he was placed in the Tool Room, working from 3:00 P. M. to 11:00 P. M., and given the same duties as Lead Carman L. C. Eubanks who held the regular assigned first shift assignment, until March 1, 1967, at which time he exercised his seniority on a Carman Welder's assignment on the first shift in the Back Shop. It will be noted that Carman Welder Phillips states that at no time while working in the Tool Room was he removed from this position and given other duties. Attached hereto and identified as Exhibit No. 5 is statement of Carman R. K. White, whose regular assignment works from 3:00 P. M. to 11:00 P. M., testifying to the fact that since March 1, 1967, he had on occasion relieved Temporary Promoted Carman Apprentice J. P. Merritt in the Tool Room, after Mr. Merritt was placed on the assignment vacated by Carman Welder Phillips. Mr. White further testifies that a Carman or Carman Welder is on duty in the Tool Room on the 3:00 P. M. to 11:00 P. M. shift, Monday through Friday, at all times. Exhibits Nos. 6 and 7 are statements from Lead Carman Welder J. W. Carter and Carman Welder H. J. Smith, who worked the vacancy created by Lead Carman Eubanks being on sick leave, until Carman J. B. Lites was assigned to the advertised vacancy on April 26, and you will note that both confirm that during the period they worked this assignment, one Carman Welder was placed in the Tool Room to work with them, and that at no time while working with them were they moved outside the shop, performing any other duties than those performed regularly by Lead Carman in the Tool Room. They further testify that they were relieved each day by Carman Welder who worked the second shift in the Tool Room. Lead Carman Tool Room J. B. Lites confirms that the only exceptions to the two men in the Tool Room on the first shift was period May 22 through May 26, when L. H. Moore was on vacation, and May 29

through June 16 while wrecker crew was working on derailment at Fair Oaks. Mr. Lites also confirms that the two Carmen on the first shift in the Tool Room were relieved each day by Carman Welder who worked the second shift in the Tool Room. It is clear from the above statements that Carrier has since sometime in January, 1966 had two Carmen in the Tool Room on the first shift in the Tool Room were relieved each day by Carman Welder who worked the second shift in the Tool Room. It is clear from the above statements that Carrier has since sometime in January, 1966 had two Carmen in the Tool Room on the first shift, and one on the second shift except on the two occasions when the assignment of the employe filling the job was blanked on his vacation and while engaged in wrecker service.

It is quite obvious from the above that two new jobs were created in the Tool Room in the Pine Bluff Back Shops, otherwise they would not have been filled for eight hours each day, Monday through Friday. That they are preferred jobs is evidenced by the fact that employes assigned to this work perform their services in an enclosure that is heated in the winter months and cooled by fans in the summer months, and they are not required to perform heavy work in all kinds of weather. We therefore submit that it is incumbent upon Carrier to advertise the assignments as requested to permit the senior Carmen the opportunity to exercise their rights to these jobs.

We further submit that our position is substantiated by Second Division Awards Nos. 1206, 1238, and 3472 on claims involving similar circumstances, and by Second Division Awards Nos. 962, 1440, 1574, 2294, and 4839, all of which sustain the claims of the employes that jobs should be advertised with sufficient clarity and information so that those bidding on them will be able to do so intelligently, and that when Carrier finds it necessary to reorganize its work, it may change the duties of an assignment or a position, but that when it does so, it becomes a new job and that fact must be outlined in bulletin advertising the job.

Therefore, under the basis of the facts as submitted and the above quoted rule, it becomes abundantly clear that Carrier's assertion that the claim is not supported by the agreed rules is without justification, and the Honorable Members of this Division are requested to so find by sustaining the Employes' Statement of Claim in its entirety.

All matters herein referred to in support of the Employes' Position have been the subject of correspondence or discussion with the Management.

**EMPLOYES' STATEMENT OF FACTS:** Pine Bluff, Arkansas is the major terminal of this Carrier. Among the facilities maintained at that point there is a gravity switching yard, a spot-repair system and a car repair shop.

Carmen at Pine Bluff comprise a single subdivision and have common rights to any service they are qualified to perform in that subdivision at any location in Pine Bluff.

Carmen are used at the gravity yard to inspect cars in trains that arrive and depart. They are used at the spot-repair system, which is located at the gravity yard, to make running repairs to cars. They are also used at the car repair shop (commonly known as the back shop), which is located about one and one-half miles from the gravity yard, to make major repairs to freight cars.

Vacancies for carmen which occur or new positions for carmen which are established are bulletined to all carmen at Pine Bluff. The positions shown on advertisement bulletins indicate the location at Pine Bluff, such as back shop or spot repair tracks, where the position will normally work, but such indication does not restrict the right of Carrier to use carmen at any point in Pine Bluff to protect any service to which their seniority entitles them and for which they are qualified. The bulletins do not indicate the duties of the position or the specific location within the shop area where the position will work, although in some instances where special qualifications are required, such as qualified car inspector or licensed driver, this information is shown on bulletin. Carmen positions on which it is expected the preponderance of their duties will require the use of welding equipment are advertised as Carmen welder positions which are paid a rate of pay six cents per hour higher than that of a carman as provided in Rule 37 of the Agreement.

As stated above, carmen in the Car Repair Shop perform major repairs on freight cars. This includes repairing car bodies and frames, air brake system, draft gear, trucks and wheels. Carmen of course are not assigned to perform a single type of repair work or to work at a single location in the car repair shop, but they perform any work that is required in accordance with their qualifications.

There is a tool room at the car repair shop. Carmen are used to perform work in the tool room in connection with care of and issuing of tools and equipment, however, they are not restricted to such location or duties. They are also used to perform any car repair work that might be required of a carman in the Car Repair Shop.

In letter November 15, 1966 the Employees filed the following request with the Master Mechanic:

“You now have one Carman Welder assigned on the 7:00 AM to 3:00 PM shift, and one Carman Welder assigned to the 3:00 PM to 11:00 PM shift. Both assignments are working full time in the tool room, and should be advertised under the provisions of Rule 12-1.”

The request was denied.

The applicable schedule agreement is that with System Federation No. 45, Railway Employees' Department, AFofL, Mechanical Section thereof, effective November 1, 1953.

#### **POSITION OF CARRIER:**

##### **I**

Carrier submits that the claim as submitted to this Board is improper and should be dismissed.

First, the claim submitted to this Board by the Employees is at variance with the issue originally presented to the Carrier on the property. During the handling of the case on the property the Employees made request that the assignments of Carmen Welder position 7:00 AM to 3:00 PM and Carman Welder position 3:00 PM to 11:00 PM be advertised. However in the Statement of Claim presented to this Board they have alleged that Carrier “arbitrarily assigned one Carman Welder to the 7:00 AM to 3:00 PM shift, and one Carman Welder to the 3:00 P.M. to 11:00 P.M. shift in the Tool Room at Pine Bluff, Arkansas” in violation of the rules.

Thus, the issue handled on the property was a request that Carrier take a particular action involving advertising carmen positions, whereas the claim presented to this Board was that Carrier had arbitrarily taken an action assigning carmen which was in violation of the rules of the agreement. There was no allegation made on the property that any carmen were "arbitrarily assigned" to positions.

Awards of the National Railroad Adjustment Board have consistently held that an organization may not handle a claim on the property and change it materially on appeal to the Board. Attention is directed to portions of Findings in the following Second Division Awards:

**Award 1471 (Referee Carter):**

"The organization may not start a claim on one basis and, when it fails, change the nature of the claim on the appeal. If such a variance in the issues were to be permitted, the parties could never be certain of the precise matters to be determined on the appeal. The issues must be the same as those determined on the property. They may not be one thing on the property and something else before this Board."

**Award 1793 (Referee Carter):**

"The organization clearly changed the claim in processing the appeal to this Board. This it may not do."

**Award 1810 (Referee Carter):**

"There appears to have been a variance in the claim handled on the property and the one presented to this Board which is fatal to a consideration at it at this time. The organization may not handle a claim on the property and change it materially on appeal to this Board."

Also Opinion of Board in the following Third Division Awards should be noted:

**Award 10537 (Referee Sheridan)**

"The evidence shows that the claim submitted here is not the one that was handled by the Carrier, there has been a failure to comply with Section 3 First (i) of the Railroad Labor Act as amended."

**Award 10749 (Referee Stark)**

"We conclude, then, that this claim must be dismissed since (1) it departs, to a significant degree, from the claim submitted and processed on the property and (2) the Carrier was deprived of its reasonable right to investigate and adjust the claim which is the subject of the case at hand."

**Award 11904 (Referee Hall)**

"For the foregoing reasons we must conclude that the Statement of Claim presented to this Board is at variance with the Statement of Claim presented to the Carrier on the property. This Board is without any authority to amend claims. We must find that the practice resorted to herein is not in accord with the provisions of Circular No. 1 of the National Railroad Adjustment Board nor in compliance with Section 3(1) of the Railway Labor Act, consequently, this Board has no other alternative than to dismiss this claim."

Secondly, the claim submitted to this Board by the Employee is vague and indefinite. It alleges that Carrier "arbitrarily assigned" two carmen

welders, but at no time during the handling of the case on the property have they alleged anyone was arbitrarily assigned. In conference on the property on August 1, 1967, the Employees' General Chairman presented six statements allegedly written by carmen in connection with work performed in the tool room at the Car Repair Shop. While these statements lend no support to the Employees' claim, it will be noted such statements do not allege any carmen were "arbitrarily assigned" and do not even show any specific dates when any carmen might have been "arbitrarily assigned" made subject of the claim presented to this Board.

L. C. Eubanks states he displaced as a Lead Carman in the tool room in November 1959. F. M. Phillips states that "sometime prior to February 1, 1966" he was placed in the tool room. The statements of R. K. White, H. J. Smith, J. W. Carter and J. B. Lites all allege they were placed in the tool room subsequent to March 1, 1967. Obviously those four statements would have no bearing on the issue here and they could not have been the carmen welders who were "arbitrarily assigned" since the original request was filed by the Employees on November 15, 1966.

Manifestly, the Employees failed to show on the property who was arbitrarily assigned and when such action occurred. The Statement of Claim presented to this Board does not specify who was arbitrarily assigned and when such action occurred. A claim so vague and indefinite does not meet the requirements for consideration by this Board and should be dismissed.

Attention is directed to the following awards of the National Railroad Adjustment Board:

**Second Division Award 3576 (Referee Bailer):**

"The state of the record in this case is such that we are unable to render a proper award to determine the merits of the dispute. The complaining employees are not named in the claim itself."

**Third Division Award 12366 (Referee Seff):**

"It is significant that the claim in the instant case is vague and indefinite because of its failure to state the dates when the alleged violations took place. \* \* \*"

"Thus the very element stated to be essential in a claim 'the dates of the violations' was not set forth in the instant matter and for this reason the said claim must fail for lack of specificity."

**Third Division Award 12848 (Referee Ables):**

"Since the claim fails to set forth the nature and extent of performance of the disputed work or when or by whom it was performed the claim is lacking in the specificity required by Section 3, First (i) of the Railway Labor Act."

Also see Third Division Awards 4305, 3396, 2125, 1566, 906, and others setting forth the principle that claims which do not name claimant, specify dates, or are otherwise vague and indefinite, may not be decided by this Board, but must be dismissed.

Without prejudice to its position that the claim is improper and should be dismissed, Carrier submits that it is not supported by the rules and should be denied.

The issue in this case involves the bulletining of vacancies or new jobs for carmen in the Pine Bluff car repair shop. Rule 12-1 of the current agreement reads:

"12-1. Any vacancy or new job established will be bulletined to employees in the subdivision of the respective Crafts in which the vacancy occurs or new job is of the same Craft at the point involved. Bulletin must be posted for five (5) days before such position is filled permanently. Successful applicant will be assigned within ten (10) days from date of bulletin. An employee desiring to avail himself of this rule will make application to the official in charge, with copy to Local Chairman. The senior employee holding seniority in subdivision where such new job or vacancy as a machanic or helper in Craft and subdivision affected. If no bids received from employees in the subdivision where position is established or vacancy occurs and no one to be recalled under the provisions of Rule 18-4, the senior applicant from other subdivisions in the Craft involved at point employed will be assigned, if sufficient ability is shown by a fair trial. A man employed to fill a vacancy or new job pending advertisement and assignment in a craft having subdivisions will not establish seniority until regularly assigned. An employee exercising his seniority rights under this rule will do so without expense to the carrier."

This rule requires that a vacancy or new job established will be bulletined in the subdivision of the respective craft in which such vacancy occurs. It does not require that such vacancies or jobs be bulletined as to specific duties or to work at a particular location within a shop.

Carmen at Pine Bluff comprise a seniority subdivision in accordance with Rule 20-1 of the current agreement reading:

"20-1. Seniority as provided for herein shall be determined by the days elapsing after the date of last employment, including time lost by leave of absence, reduction in force, or other excused cause, confined to each point of employment separately, by the craft or subdivision thereof (the seniority of journeymen, helpers, and apprentices being separate as between themselves) and seniority list shall be posted as of January 1st of each year by the Carrier at each respective place of employment and when so posted shall be binding and conclusive on all parties after the expiration of thirty (30) days or until changed by mutual agreement of the employees and the Carrier, to-wit:

#### Metal Crafts

Craft	Sub-Division
Machinists Boilermakers	*1. Locomotive Department —Back Shop *2. Locomotive Department —Roundhouse
Blacksmiths Sheet Metal Workers Electricians	1. Electricians 2. Electrical Attendants and Operators
Autogenous Welders	

\* - Subdivisions apply at Tyler only.



Carmen

1. Patternmakers
2. Upholsterers
3. Painters
4. Other Carmen
5. Truckmen
6. Helpers
7. Coach Cleaners

The following is applicable to all crafts covered by this agreement:

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Under such rule carmen at Pine Bluff have seniority rights at any location at that point and such rights are not restricted to one shop or one particular area. There is no rule in the agreement which restricts Carrier from using a carman on any work performed by carmen at Pine Bluff for which he is qualified.

For example, a carman who may be instructed to perform work on the air brake systems of cars being repaired in the Car Repair Shop is not restricted to that particular duty even though he may perform work on air brake systems for a period of time. His seniority rights are as a carman and he does not acquire any "special seniority" or exclusive rights to work on air brake systems. Neither does a carman who is instructed to work in the tool room acquire any exclusive rights to that particular duty.

The right of the Carrier to arrange and control its force and assign work except as restricted by the terms of its agreement has been recognized by various awards of this Division. Awards Nos. 2916, 3270, 3608 and others. As stated above, the current agreement contains no such restriction.

Thus, Rule 12-1 does not require Carrier to bulletin vacant positions as though such positions had exclusive right to any particular duty or work area as the Employees have requested.

This issue was involved in 1948 when the Employees requested that bulletins advertising vacancies and new positions specifically outline the duties and the class of work to be performed. The bulletin rule at that time was Rule 13-1. Exhibit 8 is copy of former Asst. General Superintendent Albert's letter to the President of System Federation No. 45 declining such request in which he stated:

"I find that it is the general practice to bulletin all permanent vacancies or new positions, but that it is not their practice to specifically outline the duties or class of work to be performed.

"For the reasons given you at our conference, I cannot consistently concede your request; however, we will give fair and impartial consideration to the request from any employee that he be changed from one type of work to another within the same seniority district."

Exhibit 9 is copy of letter dated April 2, 1949 from former Superintendent Motive Power E. V. Myers to the President of System Federation No. 45 in which Carrier's position in this regard was again confirmed. There was no further request from System Federation No. 45 that bulletins advertising vacancies and new positions outline the duties and class of work to be performed. In fact, when the current agreement was revised effective November 1, 1953, the President of System Federation No. 45 suggested the wording

of Rule 12-1 as shown by copy of his letter June 25, 1953. If it had been his intention at that time that bulletins advertising vacancies and new positions specify duties and work to be performed, there can be no doubt that such a provision would have been included in his request for the wording of Rule 12-1.

Exhibits 11 to 17, inclusive, are copies of some advertisement bulletins to carmen at Pine Bluff issued prior to and subsequent to the filing of the Employes' request made subject of this claim. Such bulletins show that specific duties and specific work area where carmen are to work are not shown on advertisement bulletins.

Therefore, the provisions of Rule 12-1 do not require that advertisement bulletins show that certain carmen positions will work in the tool room and they have not been so advertised. Second Division Award 2603 (Referee Shake) included in Findings:

"There is no better established nor more wholesome rule for the proper application of an agreement than that the parties will be bound by the construction which they have mutually placed on it over a long period of time."

As shown above, for over fifteen years the Employes have recognized that advertisement bulletins do not require that assigned duties or work areas be shown thereon.

Furthermore, the fact that the positions in question are advertised as Carmen Welders evidences that it is not contemplated that such employes will spend their entire time in the tool room. Rule 37 captioned "Welders" reads:

"37-1. In compliance with the special rules included in this agreement, none but mechanics and their apprentices, in their respective craft shall operate oxy-acetylene, thermit and electric welders. Where oxy-acetylene or other welding processes are used each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes, except the use of cutting torch when engaged in wrecking service. At points where there is not sufficient welding for a member of each craft at the point a welder or welders of any craft employed may do the welding for all crafts.

"37-2. Autogenous welders shall receive six (6¢) cents per hour above the minimum rate paid their craft.

"37-3. When performing the above work for four (4) hours or less in any one day, employees will be paid at the welders rate of pay on the hourly basis with a minimum of one (1) hour. For more than four (4) hours in any one day welders' rate of pay will apply for that day."

There would be no basis for paying a carman the increased six cents per hour differential for welding if he were to be used his entire time, or even more than four hours of each shift, in issuing and handling tools.

Carrier has previously stated that the statements presented by the Employes on the property lend no support to the Employes' claim. In this connection it should be noted that the statement of former Lead Carman L. C. Eubanks included:

"In February, 1966 until time I went on sick leave, one Carman Welder was placed in the Tool Room to work with me, performing the same duties I was performing. Carman Welders J. W. Caldwell and L. H. Moore were used to fill this position. At no time while working with me in the Tool Room were they moved outside the shop, performing any other duties than those performed regularly by Lead Carman in the Tool Room."

The Employees did not contend in this claim that the Lead Carman was "arbitrarily assigned" even though Lead Carman Eubanks stated the carmen welders performed the same duties as he did in the tool room. Exhibit 18 is photographic copy of front and reverse side of IBM time card of Carman Welder J. W. Caldwell for November 4, 1966. It will be noted his entire time for that date was charged to "Frt. Cars—Inspect and Repair". His time was also charged to "Frt. Cars—Inspect and Repair". Other time cards for both Carman Welders Caldwell and Moore during period mentioned in former Lead Carman Eubanks' statement show similar information.

It is obvious that all six statements were prepared by the same person and are self-serving, self-supporting, declarations of interest. The wording in each is almost identical except for the names and dates involved. None of the statements purport to show specifically what work was performed by the carmen welders. In each statement it is alleged that the carmen welders were not "moved outside the shop" and that they performed no duties other "than those performed regularly by Lead Carman in the Tool Room". However, the statements do not specify what duties were performed by the Lead Carman. For example, from May 29 to June 7, 1966 and from June 16 to June 27, 1966, Lead Carman Eubanks was working with the relief crane at Clarendon, Arkansas. The lead carman position assigned to L. C. Eubanks also made periodic checks of oxygen and gas system in the shop and made repairs to hose reels, gas and oxygen hose, etc. His duties, as well as carmen welders who performed some duties in the tool room, were not confined solely to the tool room.

Attention is directed to the following awards which support Carrier's position in this case:

Findings in Second Division Award 5024 (Referee Harwood) included:

"The existence of a certain duty does not create a separate job classification. Quite to the contrary, here we find that work as a groundman with the crane was not a separate classification; that it had never been bulletined nor assigned to Claimant Vallette as the senior bidder in accordance with the rules. The record is clear that the job which Claimant did hold on seniority was that of car repairer and as such he could be expected to do any of the work required at the Shop Track, such as body work, wheel work, etc. Claimant had no more right to the performance of work as crane groundman than he, or any other carman, had to any other work of the craft."

Second Division Award 3888 (Referee Bailer) denied claim of Machinists when vacant positions in car shop were bulletined without specifying particular work or operations involved. Findings included:

"\* \* \* To provide that only certain machinists are 'specialists' but others are not would be an unsatisfactory situation in our view. If the bulletins were to list all of the major types of work done in the shop,

there would be no more identification of the nature of the advertised job than is now carried in the bulletins.

"In effect, the bulletins historically issued for vacancies in the Wheel Shop indicate that the successful bidder may be assigned to any type of work arising in the shop. There is no express language in Rule 14 which requires the Carrier to specify the particular or normal duties of an advertised position. We think the traditional practice of omitting a specification of duties from Wheel Shop machinist bulletins, in contrast to even the limited identification of work contained in bulletins issued in the Locomotive Shop, represents mutual recognition by the parties that the operation requirements in the Wheel Shop do not lend themselves to the change in Wheel Shop bulletin procedure which the Organization urges in the subject claim. The claim will be denied."

Findings in Second Division Award 3337 (Referee Bailer) included:

"Claimant Dutton was a regularly assigned car inspector with headquarters at the west end of the Interchange Yard, Struthers, Ohio. On each of the three dates involved in this claim he reported and went off duty at his headquarters but during a portion of the trick he was assigned work in the West Yard. While Claimant was performing service at the latter location, work developed at the west end of the Interchange Yard and a car inspector from the east end of the Interchange Yard was sent to perform this work. All three of the involved locations are in the same seniority district. Claim is made that Carrier violated the Agreement by removing Dutton from his job and assigning another employe to do his work.

"We find no violation of the Agreement in the instant case. The bulletin location of a position does not delimit the geographical area within the seniority district where service is to be performed. Awards 3144, 3208. Thus Carrier was permitted to assign work in the West Yard to Claimant Dutton in the instant situations. When work subsequently arose at Claimant's headquarters point, there was no contract bar to assigning a car inspector with headquarters at another point in the same seniority district to do with work. Claimant did not have a prior right to said work. The specification of his headquarters entitled him only to reporting on and off duty at that location."

Second Division Award 3144 (Referee Whiting) denied claim when it was alleged bulletins were improper in that specific locations where positions were to work were not shown thereon. Findings included:

"The only service boundaries established by the agreement are the seniority districts, so, it makes no difference whether the specification involved appears on the bulletin or not, the employe can be required to perform service within this seniority district as needed."

In conclusion Carrier submits that there was no violation of the agreement and respectfully requests that the claim be denied, if not dismissed.

Data has been presented to representatives of the Employes.

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.

**A W A R D**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Second Division

**ATTEST: E. A. Killeen**  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April, 1970.