

Award No. 6059
Docket No. 5820
2-CRI&P-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement and practice, the Carrier improperly assigned the work of adjusting and securing a load of lumber on the cleaning track at Fort Worth, Texas to other than Carmen.

2. That accordingly, the Carrier be ordered to compensate Carmen L. Evans, L. Wilkerson, J. W. Tate and J. F. Turpin 2½ hours' pay each at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: On June 24, 1968, the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, engaged an outside contractor, Mr. L. G. Cockcraft, to come on the carrier's cleaning track at Fort Worth, Texas, and adjust a shifted load of lumber and resecure the same. The employes of Cockcraft, Inc. were Mr. McDonald and three other men, none of whom were employes of the carrier. They worked on the carrier's property from 2:30 P. M. until 4:00 P. M. performing this work.

The cleaning track at Fort Worth is located about a hundred yards from the repair track at Fort Worth, and carmen also repair cars on this cleaning track. The four claimants named above were off duty and available for this work. The agreement effective October 16, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is not in dispute that the carrier contracted with and permitted non-employes to perform the work in question. It also is indisputable that when the October 16, 1948 agreement was negotiated a Memorandum of Understanding prohibiting this was entered into. This is found on page 117 and 118 of the agreement as reprinted in 1958, reading as follows:

would not reflect the existence of a systemwide practice as required in those awards cited by the carrier.

EVIDENCE OF THE CARRIER

Under date of December 16, 1968, carrier furnished the organization numerous statements from its master mechanics and assistant master mechanics, along with records of transactions made at various points on random dates, with outside concerns who were engaged to handle the work of straightening, binding or transferring of loads.

The Board's particular attention is directed toward the "Statement" of Assistant Master Mechanic J. C. Kelly, Fort Worth, Texas, and the records supplied by him showing that loads had been adjusted by outside contractors at that point since 1964. His "Statement" also indicates that carrier has had a contract to have an outside concern perform this work since as far back as 1932. It was at this location that the instant claim arose.

A review of this data clearly shows that there is no universal manner in which the adjusting of shifted loads is handled on this property. Rather, the circumstances involved usually determine whether carrier's own forces or an outside concern will handle this work.

General chairman of the organization was furnished copies of all this data. He has not challenged its validity or application to the dispute at hand, except to point out that at El Reno, Oklahoma, numerous instances involved transferring the contents from one car to another. On this basis, the balance of the information supplied him remains unchallenged as being erroneous or without basis in fact.

It is also interesting to note that this data indicates that carrier has been having an outside concern perform this work for many years — as far back as 1932 — and yet, no claims were ever submitted alleging a violation of the carmen's agreement until those involved in this dispute arose.

In conclusion, the organization has provided no valid evidence whatsoever that the work involved in this dispute is exclusively reserved to Carmen on this property on a systemwide basis. Carrier, on the other hand, has provided conclusive evidence that this work is NOT reserved exclusively to carmen — notwithstanding the fact that the burden of proof is with the organization.

Therefore, carrier submits that pursuant to the many prior decisions of your Board, this claim is without merit and should 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 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.

Notwithstanding that, as between other classes of CRI&P employes covered by the Shop Crafts Schedule Agreement, the adjusting and tying down of shifted loads may not be regarded as exclusive to the Carmen's craft, the evidence shows nevertheless that this work has been generally recognized on this property to be Carmen's work (see Settlement Letter dated April 19, 1968 with reference to File L-127-1861). Thus, the activity is well within the purview of Rule 110 (Carmen's Classification of Work Rule).

It follows that Carrier's action in engaging an outside contractor (whose employes are utter strangers to the Shop Crafts Agreement) to handle the job of adjusting and securing a shifted load of lumber on Carrier's cleaning track at Fort Worth, Texas, must be deemed to be an intrusion on the Carmen's job domain.

Accordingly, claim is valid for an allowance of four hours pro rata (call-in pay), to each of the claimants herein, in lieu of the requested 2½ hours at the time and one half rate.

AWARD

That Carrier forthwith shall remunerate each of Carmen L. Evans, L. Wilkerson, J. W. Tate and J. F. Turpin with four hours' pay at the applicable Carmen's pro rata rate, in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December, 1970.