Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7978
SECOND DIVISION Docket No. 6956
2-T&P-CM-'76

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (System Federation No. 121, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(The Texas and Pacific Railway Company

Dispute: Claim of Employes:

1. That the Texas and Pacific Railroad Company violated the controlling agreement, particularly Rules 83, 84, 22 (a) and (e). When Carman Helper was assigned to perform carman mechanic's work at Marshall, Texas on July 3, 1974.

2. That accordingly, the Texas and Pacific Railroad Company be ordered to compensate Carman W. L. LaRue in the amount of eight (8) hours at the overtime rate for July 3, 1974.

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 were given due notice of hearing thereon.

The claim is predicated on the contention that on July 3, 1974, Carman Helper Richardson was used improperly to perform carmen's work on the repair track at Marshall, Texas. The work in question performed by Mr. Richardson consisted of removal of cotter keys, springs, journal bearings, key bolt wedges, key bolts, in applying four pairs of wheels to freight car ACFX 57413. According to the Carrier, Mr. Richardson was instructed to assist Carman Hayner in making repairs on this freight car and performed the disputed work in assisting Carman Hayner in applying the four pairs of wheels. In the performance of this work, Helper Richardson and Carman Hayner worked on opposite sides of the car.

The Employes argue that by permitting the helper to perform the work in question, Carrier violated Rule 83 of the controlling agreement, that Rule 84 confines the helper's function to helping the carmen and apprentices whereas, in the instant case, the helper worked alone on one side of the car performing the same work as the carman performed on the other side of the car, and that Rule 22(a) restricts the performance of mechanic's work to mechanics and apprentices.

It is the position of the Carrier that the disputed work performed by the helper in connection with assisting a carman to apply the four pairs of wheels to the freight car is not work specifically reserved to carmen under Rule 83 and that, as a matter of practice, such work has been performed by carmen helpers assisting carmen. Alternatively, Carrier argues that even if the disputed work was specifically reserved to carmen, Rule 84 contemplates that the helper perform mechanic's work provided the work is done while assisting the carman. Carrier also disputes the monetary aspect of the claim on the basis that the claimant lost no time or pay and payment is claimed at the punitive rate for time not worked.

Well settled principles require the Employes to satisfy the burden of establishing that the disputed work is reserved to carmen by reason of rules of the controlling agreement or by acceptable practice on the property. In this respect, the Employes have bottomed their case entirely on the aforementioned agreement rules which they contend establish the validity of the claim. In support of this position, Second Division Awards 1273, 1486 and 6187 are cited. These cases hold that the removal of parts, such as cotter keys, springs, journal bearings, key bolt wedges, essential in connection with the applying of wheels to a freight car is work reserved to carmen and may not be properly performed by a carman helper working opposite a carman on the same work.

Carrier argues that these awards are inapposite in that they were rendered on other properties having different rules and practices. We do not find this view of the cited cases persuasive.

We have examined these awards with care and find that while they were decided on other properties, the issues presented, the contentions on both sides including assertions of past practice by the carriers, the rules of the agreements cited in connection with the work of carmen and carmen helpers, and the work in question, were substantially the same as, and in some instances actually identical to, each of these critical factors in the instant case. It is clear that the questions presented here were actually litigated and necessarily decided in those cases.

No persuasive reason is suggested, or appears, to justify our departure from these prior decisions of this Division. On the contrary, the interests in stability, uniformity and security in relation to the application of substantially similar or identical rules strongly dictate that we should adhere to them. For these reasons, we find accordingly.

Since the work in question was lost to carmen by reason of the violation of the agreement, a monetary award at the pro rata rate, no time having been actually worked, is appropriate as remedy.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of July, 1976.

CARRIER MEMBERS' DISSENT TO AWARD 7078, DOCKET 6956 (Referee Rose)

We dissent to this erroneous award. The matters of record which clearly establish this claim is invalid were discussed in the memorandum submitted by the Carrier Members. That memorandum is incorporated by reference in this dissent.