Award No. 2976

Docket No. MW-3018

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(James M. Douglas, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated Article I, Rule 1, of Agreement in effect when it assigned employes in the Mechanical Department to make repairs to a door at a roundhouse at Finley on November 21, 1943;

(2) That B & B Mechanics J. G. Blankenship and A. C. Mauk shall be paid 8 hours each at time and one-half rate on Sunday, November 21, 1943, on account of that work to which they were entitled was assigned to and performed by employes in the Mechanical Department.

EMPLOYES' STATEMENT OF FACTS: On Sunday, November 21, 1943, two Mechanical Department employes were assigned in connection with construction of a round-house door near the Finley Shop.

While these Mechanical Department employes were engaged on that date in connection with construction of a round-house door, work coming within the jurisdiction and scope of employes in the Bridge and Building Department, the claimants J. G. Blankenship and A. C. Mauk were laying off and were not given an opportunity to work.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 1, Scope, of agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employes reads:

"Scope — Rule 1:

These rules govern the hours of service and working conditions of the following employes as represented by Brotherhood of Maintenance of Way Employes:

Bridge and Building Department Foremen.
Track Department Foremen.
Assistant Foremen.
Track Apprentices.
Bridge and Building Department Mechanics.
Bridge and Building Department Helpers.
When utilized, Operators and Cranemen (as well as Firemen and Helpers) of the following power driven machines in the Maintenance of Way Department:
Pile Drivers.

As heretofore pointed out, the work of building a roundhouse door, destroyed by an accident, is work that may be performed by Carmen. It is not alleged that the roundhouse door required renewal on account of decay, and unless it did, under the decision which the employes' representatives bound themselves to accept, the work was properly performed by the engine carpenter, a carman.

CONCLUSION:

The respondent has shown that there was no violation of Article I, Rule 1, of the agreement covering Maintenance of Way Employes; that that rule does not purport to, and does not create a work monopoly for the class of employes covered.

Respondent has shown that Classification of Work Rule for Carmen includes certain work of the nature of that here involved, and further, that a decision of an officer of the Company, which representatives of the employes involved beforehand agreed to accept and abide by, definitely places the renewal of the roundhouse door involved in this claim in the class of work that may be performed by Carmen.

Respondent has further shown that claimants did not work on Sunday, November 21, 1943; that, had they been assigned to work on the door in question, they would not have been required to work on Sunday; and furthermore, that the engine carpenter and his helper put in much less than eight hours on the date in question, working on the roundhouse door.

For all of which consideration, Carrier asserts that the claim should be denied.

OPINION OF BOARD: The question here is whether the work of renewing a door at a roundhouse at Finley, done by an engine carpenter and his helper, Carmen, should have been performed by claimants who are B&B Mechanics.

The jurisdiction of the Board has been challenged on the theory rights of the Carmen are involved and they should have had notice of the hearing so they could have participated in it. We find that contention is without merit as the rights of the Carmen are not involved in this dispute. The determination of this claim depends on the interpretation of a decision of Mr. Mackay, an officer of Carrrier, jointly agreed to by the organizations representing the Carmen and the Maintenance of Way Employes. The decision was sought for the purpose of ending the confusion as to which organization should make minor repairs to shop buildings, each organization claiming the right under their respective agreements. The decision is appended as a supplement to the agreements of both organizations. Any conflict in the rights of the two organizations to perform the work in question has been settled by the decision. The issue here is whether Carrier observed the terms of the decision.

The pertinent parts of the decision relative to the question before us are:

"DECISION:

Under the language 'Minor repairs to shop buildings' as defined in Rule 149, Shop Crafts' Agreement, Carmen shall perform:

* * *

3. Shall make minor repairs to doors, windows, platforms, i. e., doors that have been broken or knocked off and not doors that require renewal on account of decay, window sash and glass that has been broken out, particularly in cold or rainy weather when it is necesary to renew the glass to protect the employes or the property, holes or bad places in platforms that prevent trucking over or that may be the cause of employes tripping or getting hurt;

* * *

6. Carmen may also be used to make other repairs not enumerated herein when volume of job or jobs in combination is not sufficient to justify bringing in a minimum Maintenance force. (A minimum force shall be considered to be not less than Foreman and five (5) men.

Except as above, roadway forces shall make repairs to shops, buildings or fixtures, when volume of job or jobs in combination is sufficient to justify bringing in a minimum force and while so engaged may make all

repairs which show up as necessary. It is to be understood, however, that roadway men will not be brought in, even if located at the point, to do jobs which singly or in combination are not sufficient in volume to require a minimum force.

Yours truly,

(Sgd.) C. D. Mackay,
Assistant to Vice-President"

Under paragraph 3 "doors that require renewal on account of decay" are expressly excepted from the minor repairs to be performed by Carmen.

There is no dispute that the door was in such a condition that its complete renewal was necessary. The cause of the condition is disputed. Organization in its original submission charged the door was decayed and at the hearing before the Board included in its argument a statement of claimants and another person that the door was decayed. In its reply after the hearing it included a statement to such effect by one of the Carmen who had repaired the door. Carrier objects to consideration of the latter statement because of its delay in being filed with the Board. We find it was merely cumulative evidence of the statement made in Organization's original submission and that it was received by the Board prior to the closing of the file.

However, Carrier further contends that the renewal of the door was not such a job as to justify bringing in a minimum manteinance force and that it was authorized to use Carmen by paragraph 6. By the latter paragraph under such conditions Carmen may be used "to make other repairs not enumerated herein". Renewing a door because of decay is not only enumerated but is expressly excepted from the repairs Carmen may make. Section 6 cannot be understood to remove the exception even though bringing in a minimum force is not justified. The plain terms of the decision do not authorie Carmen to renew a door because of decay under any condition.

Carrier does not deny the door was decayed and offers no proof that the door was merely "broken or knocked off," as specified in paragraph 3, but speculates on the possibility the door was struck by a truck or small portable crane. In this situation the evidence in the record is sufficient to sustain the charge the door was decayed.

The Carmen who renewed the door worked on it on parts of severay days. They finally finished and hung it on Sunday, November 21, 1943. Under these circumstances it does not necessarily follow claimants are entitled to the overtime rate since it was not necessary to perform the work on Sunday. Our decision is that claimants are entitled to be paid eight (8) hours each at the pro rata rate of their positions.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934:

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained fo payment at pro rata rate as specified in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 2nd day of November, 1945.