

Award No. 10726

Docket No. MW-9389

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

BOSTON AND MAINE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed to compensate Carpenter Foreman W. O'Connor and Carpenters W. E. Wallace, T. J. Finnan, G. H. Ford, H. F. Boyer and F. A. Ruthosky at the proper rates of pay for services performed on March 12, 1956 in connection with certain repairs to and reinforcement of Flat Car No. B&M 33789.

(2) Carpenter Foreman W. O'Connor be paid the difference between what he was paid at the Carpenter Foreman's rate and what he should have been paid at the Car Repair Foreman's rate for the eight hours' service performed on March 12, 1956.

(3) Carpenters W. E. Wallace, T. J. Finnan, G. H. Ford, H. F. Boyer and F. A. Ruthosky be paid the difference between what they were paid at Carpenter's rate of pay and what they should have been paid at the Carman's rate of pay for the eight hours' service each performed on March 12, 1956.

EMPLOYEES' STATEMENT OF FACTS: On March 12, 1956, claimants were instructed to make certain repairs to Flat Car. No. B&M 33789, at Mechanicville, New York. This work consisted of strengthening the original floor of the Flat Car by laying additional flooring three inches in thickness. This new flooring was laid lengthwise and spiked to the original floor. In addition to this new flooring being installed, claimants were required to install short posts in stake pockets, and vertical planking which was nailed inside and spiked to these stakes, thereby making the car into what is commonly known in the Railroad industry as a low-side gondola car. Claimants consumed eight (8) hours in the performance of this work.

The foregoing repairs to this car were made as a safety measure to insure the safe and sound transportation of a heavy cement truck.

Claim as set forth herein was filed; the Carrier denying the claim throughout all stages of handling.

Further, in support of the Carrier's Position, the subject "Reinforcement" was taken off again by the subject Claimants when the cement truck returned to Mechanicville, N. Y., which most certainly indicates that no repairs were made to the car when reinforcement was taken from the flat car after the cement truck completed its use.

Therefore, the particular operation performed by B&B Carpenters was not, as stated above, "repairing or re-conditioning" the subject flat car—it was merely applying two (2) runners to flat car to accept their own cement truck so that the excessive weight could be uniformly distributed. The flat car is presently without the so-called "runners"—therefore, it cannot possibly be argued that the car was repaired or re-conditioned.

In view of the foregoing, the claim should be declined.

All data and arguments contained herein have been presented to the Petitioner in conference and/or correspondence.

OPINION OF BOARD: Carpenters, represented by the Maintenance of Way Employees, strengthened a flat car to accommodate a heavy cement truck. The work consisted of placing stakes in the stake pockets, placing a plank curbing against the stakes as protection against the concrete truck over-running the edge of the car, and placing timber runners on the top of the car floor to provide proper distribution of the car floor for the concentrated wheel load of the cement truck.

The Employees contend this was Carmen's work and, accordingly, that they should be paid at the higher rate for the work performed. The Carrier contends that the flat car was re-inforced and not repaired, hence was not Carmen's work.

The question to be decided then is whether or not the work was reserved exclusively to the Carmen.

The Second Division, in Award 2797 (Smith), said "no" in a claim brought by the Carmen on the same facts.

To sustain the claim in this dispute requires an over-ruling of Award 2797. Since the Second Division has jurisdiction over the Carmen's Agreements and Carmen's work, its decision on the point should control, unless palpably in error. We find no such error. However, we do not adopt any implication in Award 2797 that the character of the work may be determined by the amount of time the work will be useful.

Accordingly, we adopt the Second Division's finding that the work involved in this dispute "cannot be construed as maintenance, repair or building within the meaning of the (Carmen's) rule."

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.