

Award No. 13230

Docket No. MW-13347

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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

(1) The Carrier violated the Agreement when, on October 8, 1960, it assigned an electrician to operate Truck No. 23 instead of calling and using Delmar Edwards who is regularly assigned to operate Truck No. 23.

(2) Claimant Delmar Edwards now be allowed five (5) hours of pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant Delmar Edwards is regularly assigned to the position of Motor Truck Operator-Carpenter within the Carrier's Bridge and Building Sub-Department of the Maintenance of Way Department and is assigned to a work week of Monday through Friday. Saturdays and Sundays are rest days.

On Saturday, October 8, 1960, the Carrier assigned an electrician to operate Bridge and Building Sub-Department Truck No. 23 to transport electricians' ladders and materials from 20th Street to Rankin Avenue and return.

Motor Truck Operator—Carpenters have historically and traditionally been called and used to operate the trucks in performance of the work here involved.

The Agreement in effect between the two parties to this dispute dated May 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: In the instant dispute, Truck No. 23 was assigned to the Bridge and Building Sub-Department and the Carrier assigned Motor Truck Operator—Carpenter Edwards as operator thereof. On Saturday, October 8, 1960, a day which is not part of any assignment, the Carrier assigned an electrician, who holds no seniority within the scope of this Agreement, to operate Truck No. 23. The claimant was available but was not called for this service. The right to operate this truck was delegated to Claimant Edwards when he was awarded said position by bulletin. The rights which

transport carpenters and other employes covered by the agreement with the Maintenance of Way Organization. The only provision in the Rules Agreement between the Carrier and the Brotherhood of Maintenance of Way Employes relating to the use to be made of motor truck operators is contained in General Note (a) to Rule 2—Classification—which reads as follows:

“Motor truck operators may be used in any group in their respective sub-departments, and when not engaged in operating the trucks, shall perform any of the work of any group to which assigned, regardless of classification, to the extent of their capabilities, (not including the skilled work of ironworkers).”

Neither the quoted rule nor practice required that a motor truck operator-carpenter be called on his day of rest to transport electricians to the location of their work.

More specifically, the position of the General Chairman in handling the claim on the property concerned the point that Truck No. 23, the truck normally driven by the claimant, was the one used by the electricians on the date of claim and, therefore, the claimant was entitled to be called to drive that truck—this regardless of the use made of the truck. Certainly it cannot be contended successfully that the claimant held the exclusive right to operate Truck No. 23, particularly when its use had no connection with the work of his craft. The principle that an employe does not retain the exclusive right to operate a piece of Carrier's equipment was reiterated in Award 7 of Special Board of Adjustment 173 (UP vs. BRC—Referee Harold M. Gilden), the Findings of which contained the following language:

“Patently, the automobile truck resorted to in this instance, was not the only mode of conveyance available for transporting the two mechanical department employes from Frankfort, Kansas, to Marysville, Kansas. Neither does the Auto Truck Tractor Operator job description specifically mention the transportation of personnel as one of the duties thereof, nor is there any basis for inferring that the equipment referred to therein shall not be operated occasionally by other classes of employes in circumstances when such usage is consistent with their own assignment.” (Emphasis ours.)

The complete award is reproduced as Carrier's Exhibit H.

There was no violation of the agreement as alleged by the Organization and the claim should be denied in its entirety.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant, Delmar Edwards, is regularly assigned to the position of Motor Truck Operator—Carpenter within the Carrier's Bridge and Building Sub-Department of the Maintenance of Way Department and is assigned to a workweek of Monday through Friday; Saturdays and Sundays are rest days. On Saturday, October 8, 1960, the Carrier assigned an electrician to operate Bridge and Building Sub-Department Truck No. 23 to transport electricians, ladders and materials. It is the contention of Claimant that he has historically and traditionally been called and used to operate this truck in the performance of the type of work here involved.

This is denied by the Carrier, who contends that Electricians were called for a rush repair job and one of them, a licensed chauffeur, drove company

Truck No. 23 transporting the electricians and their equipment for a distance of approximately one mile. Carrier concedes that the particular truck used was normally driven by the Claimant incident to the work of his craft and that Claimant was used on occasion to drive electricians to one location or another but maintains that this did not establish this function as part of Claimant's duties, as it was purely incidental to his basic function of driving a truck to transport carpenters and other employees covered by the Maintenance of Way Organization.

It is the further contention of the Carrier that the electricians whose services were required and one of whom drove the truck are represented by the International Brotherhood of Electrical Workers, one of five Shop Craft Organizations party to an Agreement, effective April 1, 1945; that there is no requirement, contractual or otherwise, that a Maintenance of Way employee be used to drive a company truck to transport another craft represented by another organization in connection with the work of that craft and that to sustain this claim would deprive a qualified chauffeur in the Electricians' Organization of the right of driving a company vehicle incident to the performance of electrician's work.

In answer to this contention Claimant urges that his right to operate this truck was delegated to him when he was awarded his position by bulletin and, having done the work involved here in the past, by tradition and practice he had the exclusive right to continue it, which Carrier denies.

Rule 2 of the Agreement contains the following:

"General Notes: (a) Motor truck operators may be used in any group in their respective sub-departments, and when not engaged in operating the trucks, shall perform any of the work of any group to which assigned, regardless of classification, to the extent of their capabilities, (not including the skilled work of ironworkers)."

This rule just cited did not require that a motor-truck operator be called on his day of rest to transport electricians or their equipment to the location of their work. The operation of the truck was in no way connected with the performance of work coming within the Scope of the Maintenance of Way Agreement.

In Special Board of Adjustment No. 173 which involved a claimed violation of an Agreement when Carrier permitted a hostler to transmit an Electrician in Store Department equipment regularly operated by an Auto Truck Tractor Operator we note the following: "nor is there any basis for inferring that the equipment referred to therein shall not be operated occasionally by other classes of employees in circumstances when such usage is consistent with their own assignment."

It, therefore, becomes incumbent on Claimant, if he is to sustain his claim, to establish by the burden of proof that it was the tradition, custom and practice on this property that the operation of this truck was exclusively the right of the Claimant on occasions such as involved here. It appears from the Agreement between the Carrier and the Electricians, set forth in the record, that in the past electricians had on occasions used their own private automobiles in the furtherance of the work of their craft. This is not denied by the Claimant. From a consideration of the entire record we must conclude that Claimant has failed to establish that Carrier had to call Claimant to do the driving of the truck for electricians on such occasions as involved here.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1965.