# Award No. 1997
# Docket No. 1825
# 2-SP(T&NO)-CM-'55

## NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.—CARMEN

## SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (Texas and New Orleans Railroad Company)

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current agreement Carmen Helpers C. C. Middleton, H. Kennerson, M. Bolen, E. Mitchell, M. Bryant, W. Taylor and A. Jones were improperly furloughed during the period December 8, 1953 to April 28, 1954 at Houston Terminal, Houston, Texas.

2. That accordingly the Carrier be ordered to compensate the aforesaid Carmen Helpers for all time worked by Carmen Helpers J. O. Northcutt, A. D. DeFoor, M. T. Earnest, W. R. Davis, J. A. Curry, C. T. Kuenhe, Jr., R. L. Maddox and R. C. Vickroy during the period December 8, 1953 to April 28, 1954 at the applicable rate of pay.

**EMPLOYES' STATEMENT OF FACTS:** December 4, 1953, Bulletin No. 128 was posted in the Houston Terminal as notice of a force reduction in the carmen helpers' force, effective at 12:00 Noon, December 8, 1953. Senior carmen helpers named below with their seniority dates identified after each name were laid off December 8, 1953:

| "Senior Carmen Helpers | Seniority Date |
|---|---|
| C. C. Middleton | 9-22-1950 |
| H. Kennerson | 9-23-1950 |
| M. Bolen | 9-26-1950 |
| E. Mitchell | 9-27-1950 |
| M. Bryant | 9-28-1950 |
| W. Taylor | 10-10-1950 |
| A. Jones | 10-10-1950" |

Junior carmen helpers who were retained in service as of December 8, 1953 are named below with their seniority roster dates identified after each name:

24 are not applicable to the carmen who had been temporarily promoted and were working as mechanics, but that the provisions of the memorandum of agreement of 1947 cover the upgrading and demoting of carmen helpers temporarily promoted and working as carmen. Therefore, carrier correctly applied the provisions of the applicable agreement relating to reduction in forces of the carmen helper class.

**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.

The parties to said dispute were given due notice of hearing thereon.

Reduction in carmen helpers' forces at Houston Terminal became effective December 8, 1953, and the seven claimants were laid off. Claimants were senior on the carmen helpers' roster to eight employes retained. The status of the retained group was that of temporarily promoted carmen, taking mechanics' conditions and pay. No carmen were laid off at this point.

The organization contends that Rule 24 is controlling. This rule, in part, provides:

> "* * * Employees will be laid off in accordance with their seniority as per rule 28, * * *."

The carrier relies upon the upgrading agreements which preserved to upgraded employes their rights to carmen helper seniority pending their qualification as mechanics. It contends that such agreements had the effect of creating a separate class of employes to be treated separately for the purpose of reduction in force, pointing especially to the provisions of paragraphs "F" and "G" of the 1943 Memorandum of Agreement as well as to quoted sections of the 1947 agreement. All, it states, is retained in the National Agreement of 1953. It argues that such provisions constitute a modification of the general rule governing the reduction of forces in this class of temporarily promoted carmen.

The procedures provided in the upgrading agreement, we find, in no way affect the basic seniority status of carmen helpers. They simply provide a method of moving in and out of the temporary class of upgraded carmen as such class is affected by the supply of carmen. To this extent the agreements can be said to provide a special rule applicable to reduction in force of carmen, a seniority status to which the involved employes had not succeeded. For example, paragraph "F" of the 1943 agreement has no reference to seniority as such, nor to the subject of force reduction in the helper class. Simply, "if mechanics become available" such and such a method will apply in setting back the temporarily promoted carmen, but the agreements do not pick such employes up from there.

Likewise, in paragraph "G" following, "When the emergency is over, or their services are no longer needed as mechanics," what occurs? The agreement answers, "they will be returned to their former status, unless they have gained full promotion under the provisions of this agreement." There is nothing there contained in recognition of any special seniority rights in the temporarily upgraded carmen.

The principal change effected by the 1947 agreement obviously was intended to take care of those employes who hesitated to give up early seniority as a helper to be the low man on the carmen's roster. Accordingly, they were granted a right to continue in their temporary status with continued helper seniority rights until mechanics became available. The obvious purpose in so insisting was to protect themselves from layoffs in carmen force reductions through operation of Rules 24 and 28. The only reference

to force reduction in the 1947 agreement is simply to provide the order in which the temporarily promoted are set back to the helper classification. Similarly in the 1953 agreement. In short, the agreements provide in varying terms for the promotion and demotion **within a class** and, being in derogation of seniority rights, call for special treatment. However, nowhere in the special agreements do we find language which either expressly or by implication sets aside or modifies Rules 24 and 28, or which can be said to apply to force reductions in the carmen helper classification, the only class in which the affected employes hold seniority status.

We are not unmindful of the difficulties which may confront management in applying the agreements as here construed, but collective bargaining and not Board dictate must round out the agreements to give rule coverage and greater flexibility to force reductions among the various classes of employes if that be mutually desired.

In Award 1558, we were dealing with differing rules and facts which make such award inapplicable to the case at hand. There the agreement permitted reduction in forces at any point, or in any shop, department or subdivision thereof. Reduction in force occurred at Decatur, Illinois, car department and the retained employe was a road electrician at Montpelier, Ohio. In the instant case all employes involved worked at the same point and department.

AWARD

Claims sustained for days of work lost at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1955.

**CARRIER MEMBERS' DISSENT TO AWARD NO. 1997**

After the fullest consideration, this Division in at least six earlier cases, viz: Awards Nos. 1122, 1164, 1181, 1468, 1471 and 1481, held to the effect it is without authority under the Railway Labor Act to make or add to any agreement. Here we have a controversy, the essentials of which seem indistinguishable from those of the awards cited above. In the absence of any rule in the current agreement between the parties providing specifically that helpers upgraded to and actually working as carmen mechanics shall lose their jobs in a force reduction of **not carmen** mechanics working as such, **but helpers** working in fact as helpers, nor is there any showing by the petitioner that the claimants were qualified or, if qualified, desired to be upgraded to mechanics, it appeared to us quite appropriate to have left the essential question of this controversy to the collective bargaining procedures of the Railway Labor Act.

This award not only added something new to the Carrier to which it had not assented by way of reducing its force of mechanics when there was no actual force reduction in this classification, but ordered it to pay a penalty in the form of substantial money payments for which there is no support whatever in the working agreement extant between the parties.

Our views, however, have not commended themselves to the majority so we are expressing them by means of this dissent.

**M. E. Somerlott**
**J. A. Anderson**
**E. H. Fitcher**
**D. H. Hicks**
**R. P. Johnson**