

Award No. 4316
Docket No. 3944
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION OF
AMERICA, A. F. of L. - C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

On May 28, 1960, Laborer A. Reiss was used to wash dishes on the wreck train. This work has always been done by helpers. For this reason the organization requests that Helper T. Foley be compensated the helper's rate of pay from 4:00 P. M. May 28, 1960 until 6:00 A. M. May 29, 1960.

EMPLOYEES' STATEMENT OF FACTS: This case arose at McKees Rocks, Pa., and is known as Case M-299.

Until this instant case anytime the wreck train was used and employees were fed and then dishes, etc., had to be washed a helper was always called to do this work. This is borne out by a statement received from one of the helpers that has been called out to do this work.

No where in the present agreement does it state that the carrier can use laborers to assist carmen at any kind of work.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company, covering Carmen, their Helpers and Apprentices (Car & Locomotive Departments), a copy of which is on file with the Board and is by reference hereto made a part of these statement of facts.

POSITION OF EMPLOYEES: That the work of washing dishes on the wreck train has always been done by helpers and the same should have been done in this instant case.

That no where in the agreement are there any rules that permit the carrier to use laborers to assist carmen in doing any type of work but there is

evidence in favor of the carrier outweighs the claims paid in wreck crew situations presented by the organization." (Emphasis ours.)

The claim of the employees in Award No. 3279 was denied, and the Findings of the Board read in part as follows:

"* * * We are unable to find satisfactory support in this docket for the claim of past practice and are therefore of the opinion that the instant claim lacks merit." (Emphasis ours.)

In addition to the above awards, where it has been shown that the Employees were unable to support charges that past practices were violated, or that past practices existed, attention is directed to awards of the Second Division covering disputes between this carrier and the Transport Workers Union of America, concerning Rule 26, Carmen Helpers.

In Award No. 3211, the Findings read in part as follows:

"* * * In this docket the union claims that Rule 26 was violated. The rule is a classification of work rule which enumerates some of the duties of a helper and concludes with the catch-all phrase, 'and all other work generally recognized as carmen helpers' work, shall be classed as helpers'. This rule does not contain any language establishing that such work shall belong only to helpers. It is descriptive, not exclusive. * * *."

In Award 3617, the Findings of the Board read in part as follows:

"* * * The Carmen classification and Carmen Helpers classification plainly were not intended to be mutually exclusive. * * *."

All of the citations above have been taken from awards of the Second Division covering disputes between the same parties here in dispute, and the language as quoted above fully supports carrier's position.

CONCLUSION: The carrier has shown that the employees are alleging a practice that does not exist, whereas the true practice as shown by the carrier supports its action in this dispute. It has also been shown that the claim of the employees is not based on the facts involved in the use of Laborer Reis. Carrier has, in addition, shown that the agreement was not violated. In further support of its position, carrier has shown awards of the Second Division covering previous disputes with the same organization as involved here.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 instant claim involves a substantially similar factual situation, the same labor agreement, and the same legal questions as those submitted to us

for adjudication in our Docket 3942. We denied the previous claim in our Award No. 4315. What we have said in that Award with respect to the assignment of kitchen work in the wreck train diner to employees other than carmen helpers also applies to this case.

In further support of his claim, the Claimant has submitted an affidavit of carmen helper George J. Adamich in which the latter stated: "I have been called to wash dishes on wreck train in addition to regular wreck crew." The affidavit does not evidence a representative number of specific instances from which we could reasonably conclude the existence of a consistent and long-continued practice well-known to and mutually accepted by all interested parties as asserted by the Claimant. As a matter of fact, the record shows that Adamich was used only once (January 7, 1947) to wash dishes in the wreck train diner in connection with other work performed by him (moving tools and equipment and shoveling mud). It is self-evident that this isolated instance does not constitute a binding practice.

In summary, we hold that, for the reasons stated in our previous Award, the instant claim is without merit. See: Award 3991 of the Second Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1963.