

Award No. 370
Docket No. 365
2-D&RGW-SM-'39

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (SHEET METAL WORKERS)

THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Water Service Helpers Henry Koch, Pueblo, Colo., and P. W. Cleico, Helper, Utah, were replaced by other employes in violation of Rule 25 of the current agreement, and that they be restored to service with compensation for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Management has displaced water service employes with maintenance of way employes, which is a violation of the present agreement in effect on this property; that is, The Denver & Rio Grande Western Railroad, and is a violation of Rule 25, which reads as follows:

"RULE 25

Helpers

Those employes regularly assigned as helpers to assist water service mechanics, including all work generally recognized as helpers' work."

When the vote was taken by the National Mediation Board, the voting list was furnished by the above carrier and the names of the water service employes were furnished under the heading of Sheet Metal Workers; consequently, the carrier admitted that the sheet metal organization would represent this class of employes; also, when the agreement was written, the carrier admits again that this class of employes was covered by said organization, as he again admits this in Exhibit 1 of January 18, 1938. Prior to the writing of said agreement, this class of employes was covered by the same department. Helpers in the treating plants were permitted to go to the ranks of mechanics and allowed to displace the helper in treating plant in reduction in force.

On or about January 18, 1938, the management informed the general chairman that they were reclassifying and reducing the wages; also, that this work now came under the maintenance of way. At all conferences to date, it was agreed that these employes and work were represented by the metal trades or crafts; however, it then became the thought of the management after this date that these employes came under another organization. We cannot see where the carrier has the right to enter into the jurisdiction of an organization and place the employes at will. This is the only argument the

the duties previously performed by the occupant as a pipefitter helper, and the work of the position being confined exclusively to taking care of the treating plant which brings the job within the scope of the maintenance of way agreement.

We had a similar case at Helper, Utah, on our Salt Lake Division, wherein the water service helper in charge of the treating plant devoted about four hours per day to operating the treating plant, the balance of his time being utilized as a pipefitter helper performing miscellaneous water service work. Effective November 1, 1938, wayside pumping and treating plants were placed in operation at Kyune and Colton, Utah, stations thirteen and eighteen miles, respectively, west of Helper, Utah. With the installation of these wayside pumping and treating plants at Kyune and Colton, an exclusively assigned treating plant operator was placed in charge of the treating plant at Helper, and was also required to take care of the pumping and wayside plants at Kyune and Colton. With the elimination of the miscellaneous water service work from the duties of the treating plant operator at Helper, and with the additional duties of pumping water and taking care of the wayside plants at Kyune and Colton, the job became one which comes within the scope of the maintenance of way agreement; therefore, bulletin covering the establishment of the new position was posted to all pumpers on the Salt Lake Division. We had no bidders for the job and the water service helper who had previously held the position made no request for same, due, as I understand, to the fact that he did not care to forfeit his seniority in the water service department, and principally for the reason he was afraid to operate a motor car on the main line between Helper, Kyune and Colton.

For the information of the Board, will say that the maintenance of way organization on this property claims jurisdiction over exclusive positions of treating plant operators such as are now in effect at Pueblo and Helper, and for the reason we now have four soda ash treating plants in operation, and it is contemplated three or four additional stations will be established in the next year or two, arrangements were made in November, 1938, with the maintenance of way organization to establish division seniority lists for treating plant operators separate from the pumper's list.

For the further information of the Board, the carrier desires to point out that for many years we have had treating plants in operation at Thompson-Cisco and Green River, Utah, and the operation of such plants has always been considered as work coming within the scope of the maintenance of way agreement and has been manned by maintenance of way employees. Furthermore, to our knowledge, no request has ever been presented by the water service employees that employees in their department be permitted to man these stations.

The carrier contends the work of exclusive treating plant operators is not and never has been recognized as water service helpers' work, and further contends there is nothing in Rule 25 or any other rule of the agreement which gives this work to water service helpers.

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 employees 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.

There is no rule in the sheet metal workers' agreement in the maintenance of way department expressly covering the water treating and pumping plant work.

The rules cited by the employees do not cover this work.

While this Board recognizes that by long practice and custom the men working on this particular assignment have been considered as coming under the jurisdiction and classification of sheet metal workers, practice and custom does not create rules.

There is no rule preventing the carrier from taking the action that it did in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd Day of August, 1939.