

Award No. 694
Docket No. 701
2-NC&StL-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 83, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: That laborers engaged in heating rivets used in rebuilding, maintaining and repairing freight and passenger cars and other work generally recognized as carmen's work, are performing work classified under Rule 124 as carmen helpers' work.

JOINT STATEMENT OF FACTS: The work of heating rivets for use in rebuilding, maintaining and repairing freight and passenger cars is performed by laborers. Laborers have been used to perform this class of work for a number of years.

POSITION OF EMPLOYEES: That Rule 124, which reads as follows, is being violated by the carrier assigning laborers to heat rivets:

Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint on other than passenger cars preparatory to painting, operation of paint sprays on freight train equipment, car oilers and packers; operators of bolt threaders, nut tappers, drill presses and punches, and shear operators (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, and backing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, rebrassing of cars in connection with oilers' duties, cleaning journals in the application of wheels to cars, repairing steam and air hose, assisting carmen in erecting scaffolds, and all other work generally recognized as carmen helpers' work shall be classed as helpers.

Rule 122, carmen's classification of work rule, includes the repairing and building of freight and passenger cars, which work necessitates the use of bolts and rivets. Rivets must be heated before they can be driven, and are actually a part of the car being repaired, built or rebuilt. Rivets, before being driven, must be heated to the proper temperature, the knowledge of which is certainly not essential to ordinary common labor. As rivets are an integral part of the steel car, which cannot, in the complete riveting process, be put in place by the mechanic unassisted, someone must assist him in the operation, by heating the rivet as well as holding on, or, what is more commonly known as bucking, the rivet.

A helper "holds on," or "bucks," the rivet after it is heated and placed in the rivet hole to be driven by the mechanic. The "holder on," or "bucker," is, beyond doubt, assisting or helping the mechanic, but no more so than the person heating the rivet, both of whom are indispensable in the rivet driving operation.

the United States Railroad Labor Board, after conducting hearings during the early part of 1921 on the general question of rules and working conditions, agreed with the carriers in their contention that rivet heating was ordinary laborers' work, and **eliminated** such work from the carmen helpers' classification rule contained in Addendum No. 6 to Decision No. 222 which was issued November 29, 1921. Carrier has also shown that subsequent to Addendum No. 6, rivet heating has been **specifically eliminated** from the various revisions of the carmen helpers' classification rule in effect on this railway.

Carrier has also shown that it was understood by all concerned that the carmen helpers' rule contained in Addendum No. 6 to Decision No. 222, did not include rivet heating, this fact being evidenced by the excerpts from meetings held on this railway shortly after the issuance of Addendum No. 6, at which time the employes requested that the words "rivet heaters" be "inserted" in the rule, and when carrier refused this request, the employes then requested that "interpretation" be placed on the rule to include rivet heaters, as well as material carriers, as carmen helpers, which request was also declined.

Carrier's contention that it was not the intent of the makers of the current carmen helpers' rule to include rivet heating therein, is further evidenced by the fact that during negotiation of the rule the employes' committee **requested** that rivet heating be included in the rule, but carrier declined to accede to this request. Therefore the rule negotiated **specifically and intentionally omitted** rivet heating from the work of a carman helper.

The employes give numerous reasons in their submission as to why they consider rivet heating **should be considered** carmen helpers' work, all of which carrier contends is irrelevant to the case at bar, as the wording of the rule and the obvious intent of the makers of same at the time it was negotiated, are the only legitimate bases the claim here involved can have.

The employes contend that rivet heating was recognized as carmen helpers' work in Section 6-B of Supplement No. 4 to General Order 27, and in the so-called National Agreement between the Railroad Administration and the Federated Shop Crafts. Carrier submits that the **current** carmen helpers' rule is the controlling rule in the instant case and the rule upon which the decision in this case must be made.

The employes also refer to Railroad Board of Adjustment No. 2 cases contained in Dockets FB 283, No. 1261 and No. 2033. Carrier has shown wherein the disputes in those cases involved the rate of pay of rivet heaters under eighteen years of age and the carmen helper classification rules involved at that time were those contained in Section 6-B of Supplement 4 to General Order No. 27 and Rule 156 of the so-called National Agreement, neither of which rules are applicable to the instant case.

The employes in this case are seeking a ruling which in effect would establish a new rule, which this Division is not authorized to make.

* * *

In consideration of all of which the carrier respectfully asks the Second Division to deny the claim and dismiss the petition herein.

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.

The evidence of record in this case does not substantiate the employes' claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of January, 1942.