# Award No. 760
# Docket No. 696
# 2-TPMPTofNO-CM-'42

## NATIONAL RAILROAD ADJUSTMENT BOARD
## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

## THE TEXAS PACIFIC MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS

**DISPUTE: CLAIM OF EMPLOYES:** That at New Orleans, Louisiana, on April 21, 1941, the carrier violated Rule 89, by the assignment of Carman Helper P. Kass on line of road to inspect and condition journal boxes on T. & P. diner car No. 1010.

That Carman J. W. Owens be compensated six (6) hours at rate and one-half and five (5) hours at pro rata by reason of Helper Kass' assignment on line of road to perform carmen's work in violation of Rule 89 on April 21, 1941.

**EMPLOYES' STATEMENT OF FACTS:** At New Orleans, La. on April 21, 1941 the carrier supplied Carman Helper P. Kass, with jack, blocks, packing tools, brasses, oil can and bucket of packing, and instructed him to ride passenger train No. 21, to Alexandria, La. for the purpose of giving whatever attention was necessary to journal brasses and boxes on T. & P. diner car No. 1010, to which new wheels and journal brasses had been applied.

Train No. 21, left New Orleans at 10:20 P. M. and arrived at Alexandria at 3:40 A. M. Helper Kass inspected journal boxes and brasses on diner No. 1010 at Gouldsboro, Donaldsonville, White Castle, Plaqueminto, Addis, Melville, Bunkie, and Alexandria. He returned on train No. 24, which arrived in New Orleans at 12:30 P. M. April 22, 1941. The regular hours of employment of Helper Kass are from 7:00 A. M. to 4:00 P. M. The regular hours of employment of Carman Owens are from 7:00 A. M. to 4:00 P. M.

**POSITION OF EMPLOYES:** That the carrier violated Rule 89 by sending Helper Kass, out on line of road alone, to inspect and condition oil boxes, on the above mentioned car, Rule 89 reads in part:

> "When necessary to repair cars on the road or away from the shops, carmen and helper when necessary."

Local committee at New Orleans, handled this claim for Carman Owens, on the basis of Rule 89, but the claim was denied. Letters that passed between the local officials and the committee are herewith submitted and marked Exhibits A to D. General Chairman wrote June 7, Exhibit E to

6. We had a similar case with the carmen on the Texas & Pacific in the year 1939; however, in that case the employes contended that the carrier was not within its rights in sending B carmen and helpers on line of road to apply wheels to cars. Portion of former General Chairman of the carmen, Nichols' letter of August 23, 1939, to assistant vice president, as follows:

> "The employes contention is that the foreman erred in not sending a carman and a helper instead of a 'B' mechanic and helper. We base our position on Rule 89."

Since your Board ruled that a B carman was properly a carman under the rules, this case was dropped. However, we are calling this to your attention in order that we can further show to what lengths the employes will use a rule. In this instance they did not want a carman and helper to perform work on line of road. Now they do not want a carman helper to assist the conductor in repacking or servicing a box on line of road.

We have machinist helpers working under the same agreement as the carmen helpers that are assigned to riding locomotives for the purpose of servicing journal boxes, etc., on line of road. The rules are no different and to say that servicing a box on line of road is carmen's work is to say that this is machinists' work, and such is not a fact.

7. At the time the rules were negotiated with System Federation No. 121 it was an established fact that carmen helpers were and would continue to pack boxes on line of road on cars and, therefore, no mention was made of this other than contained in the above rules. The employes are well aware of this and are only endeavoring to use awards as mentioned above for basis of handling this work on the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans. We have shown beyond doubt that awards shown above are not applicable in this case.

8. We would call your Board's attention to case covered by Award 637, Docket No. 598, a Texas and Pacific case—a position that required the services of a carman helper to go to and from Texarkana to service boxes on cars that were picked up at Hoots, Texas. Your Board ruled as follows in that case:

> "Substantially all the work at Hoots is helper's work. The agreement does not contemplate or require maintenance of a carman under such facts. Seniority rights of men at Texarkana, seniority point, have not been violated. Bulletin was not mandatory when the position was assigned but pursuant to the agreement subsequently executed, future vacancies should be bulletined."

It is proven beyond doubt that carmen, in all cases, are not required to work with a carman helper when you have work coming under carmen helpers' classification to perform. Certainly in sending Kass on line of road to perform duties coming under his classification, if necessary which was not the case in this handling, is not a violation of any rule in the agreement with System Federation No. 121. We comply with Rule 89 in its entirety and that is when necessary to send carmen and helpers on line of road to repair cars as shown in this rule they are so handled. We do not feel that in view of the fact that packing of boxes, oiling and brassing of cars is helper's work that we should send carmen on line of road to perform helpers' work.

**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.

This record justifies the conclusion that the assignment of Helper P. Kass on line of road to perform carman's work was in violation of Rule 89 of the current agreement and Carman Owens was entitled to the overtime pay.

AWARD

Claim sustained to the extent that Carman Owens be paid the amount of overtime worked by Helper Kass.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of April, 1942.