

Award No. 935
Docket No. 873
2-D&RGW-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarthy and Henry Swan, trustees)

DISPUTE: CLAIM OF EMPLOYES:

1—That during October 6 to 27, 1942, at Grand Junction roundhouse, the carrier violated the controlling agreement, Rules 91, 28 and 8, thereof, also memorandum of agreement dated January 1, 1942, by:

- (a) The arbitrary assignment of Carman Helper George Wright to the position and pay of a locomotive carpenter on the 11:30 P. M. to 7:30 A. M. shift.
- (b) Arbitrarily depriving the locomotive carpenters, regularly employed on the 7:30 A. M. to 3:30 P. M. shift and the 3:30 P. M. to 11:30 P. M. shift, of their contractual right to perform the work to which said Helper Wright was assigned.

2—That in consideration of the aforesaid violations, the carrier be ordered to equally divide the time worked by said Helper Wright between the locomotive carpenters employed on the 7:30 A. M. to 3:30 P. M. and 3:30 P. M. to 11:30 P. M. shifts, at time and one-half rate of pay, in accordance with Rule 8 of the agreement.

EMPLOYES' STATEMENT OF FACTS: At the Grand Junction roundhouse, the carrier maintains three shifts of locomotive carpenters. Their names and the shifts on which employed, October 1, 1942, are as follows:

- (a) Messrs. G. G. Garber, L. H. Lupton, and E. W. Erickson were regularly employed on the first shift from 7:30 A. M. to 3:30 P. M.
- (b) Messrs. Murl Francis, E. W. Potter and Clyde Younger were regularly employed on the second shift from 3:30 P. M. to 11:30 P. M.
- (c) Mr. Ralph Baker was regularly employed on the third shift from 11:30 P. M. to 7:30 A. M.

On or about October 1, 1942, Mr. Baker obtained a leave of absence on account of sickness, and thereupon bulletin was properly posted advertising the vacancy for bid.

Messrs. Garber and Lupton in addition to occupying their own shift were used to fill Baker's vacancy until the bulletin expired on October 6, 1942, and were paid time and one-half for their services on the third shift.

machines are undergoing repairs and his duties shall consist of testing, inspecting and adjusting machines and applying cables.

Article 91 reads:

Qualifications

Any man who has served an apprenticeship or has had four (4) years' practical experience at carmen's work; who, with the aid of tools, with or without drawings, can lay out, build, or perform the work of his craft or occupation in a mechanical manner shall constitute a carman.

Grand Junction is a large running repair point, and carrier contends it was necessary to fill the position of locomotive carpenter at that point on the third shift from 11:30 P. M. to 7:30 A. M. The position pays 96 cents per hour as against the rate of 87 cents per hour for freight carmen, and carrier holds that when it gave all car department journeymen an opportunity through Bulletin No. 481 to bid on the job and no one did so, it was justified in assigning Mr. Wright to the job.

It will be observed from the seniority list of carmen helpers, as of January 1, 1941, above set forth, that all of the carmen helpers senior to Mr. Wright who are now in service have been advanced to the position of carmen. It is true that Mr. D. E. Rawlings, just senior to Mr. Wright, was not advanced until January 30, 1943; however, this is due to the fact that when the position of locomotive carpenter became available October 6, 1942, he did not care for advancement.

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 Division finds in this case the rules of the current agreement and the memorandum thereto of January 1, 1942, providing for the advancement of apprentices and helpers were violated.

A carman should have been used to perform the work in question, or one called under the provisions of Rule 8.

In the instant case, using a carman helper to perform carmen's work has been discontinued. The claim for compensation disallowed without prejudice to other or future claims.

AWARD

Claim 1 sustained.

Claim 2 disposed of in accordance with last paragraph of above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1943.