

Award No. 936
Docket No. 874
2-D&RGW-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

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

(Wilson McCarthy and Henry Swan, trustees)

DISPUTE: CLAIM OF EMPLOYEES:

1—That during October 24, 1942, to November 17, 1942, inclusive, at Colorado Springs, Colorado, the carrier violated the controlling agreement effective September 1, 1940, and Rules 91, 28, 15 and 8 thereof, also the memorandum of agreement of January 1, 1942, by:

- (a) Arbitrary assignment of Carman Helper Fred Cooper to the position and pay of mechanic on the 11:00 P. M. to 7:00 A. M. shift.
- (b) Arbitrarily depriving Carman F. D. Ward, regularly employed on the 7:00 A. M. to 4:00 P. M. shift, and Carman L. M. Elenburg, regularly employed 3:00 P. M. to 11:00 P. M. shift, of their contractual right to perform the work to which Carman Helper Cooper was assigned.

2—That in consideration of the aforesaid violations, the carrier be ordered to equally divide the time worked by said Helper Cooper between the carmen regularly employed at Colorado Springs, in accordance with Rule 8 of the agreement, namely: Carmen F. D. Ward and L. M. Elenburg.

EMPLOYEES' STATEMENT OF FACTS: Colorado Springs, Colorado, is defined as within the seniority district of Pueblo, Colorado, in accordance with the provisions of Rule 27 of the controlling agreement.

At Colorado Springs, Colorado, the carrier maintains three shifts in the car department. The names of the employees together with the shift they work follow:

E. P. Johnson	Car Foreman,	
F. D. Ward	Carman,	regularly assigned to 7 AM to 4 PM shift.
L. M. Elenburg	Carman,	regularly assigned to 3 PM to 11 PM shift.
W. J. Gouran	Carman,	regularly assigned to 11 PM to 7 AM shift.
Fred Cooper	Carman helper,	regularly assigned to 7 AM to 4 PM shift.

Rule 8 reads:

Distribution of Overtime

(a) When it becomes necessary for employes to work overtime, they shall not be required to lay off during regular working hours to equalize the time. Overtime will be distributed equally among the separate classes of employes, such as back shop, roundhouse, wheel shop, repair yards, train yards, etc., so far as the character of the work will permit.

(b) Records will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. The responsibility of distributing overtime will rest with the Local Chairman of the craft involved.

and copy of the memorandum of agreement effective January 1, 1942, is appended hereto.

Mr. Cooper entered service at Colorado Springs, as a laborer, July 22, 1937, and was promoted to carman helper March 22, 1942. He was advanced to position of carman and retained in that capacity for the reason, as heretofore stated, there were no qualified carmen available and for the further reason all carmen helpers in the Pueblo seniority district with four or more years' service had been advanced—under the provisions of the agreement, effective January 1, 1942—to the position of carmen. The demand and requirements of the service at Pueblo were such that it was not possible, when the vacancy first occurred at Colorado Springs, to force the junior qualified employe on the job. As soon as it was possible to do so, the carrier took advantage of Rule 15 (d) and forced the junior man on the job.

The carrier, on several occasions, has attempted to negotiate with the federated shop crafts committee a modification of the provisions of the agreement of January 1, 1942, and permit the advancement of helpers with less than four years' service, to mechanics, but without success.

The carrier contends it was justified in advancing Carman Helper Cooper to the position and pay of carman for the following reasons:

1. There were no qualified employable carmen available, and
2. All the qualified carmen helpers in the Pueblo seniority district who, under the provisions of the agreement of January 1, 1942, could be advanced to carmen were advanced, and
3. The present emergency makes it necessary to fill all vacancies whenever possible and the shortage of help and the requirements of the service are such it is necessary to advance to the position of carman any promising and capable employe until such time as four-year carmen are available.

The carrier further contends, in view of these circumstances, the claim should be denied.

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.