

Award No. 1373

Docket No. 1277

2-GM&O-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (CARMEN)**

GULF, MOBILE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the reconditioning of reclaimed journal box packing and the preparation of new journal box packing is work that has long been recognized and properly performed by carmen helpers under the terms of the current agreement.

2. That the contracting out of the aforesaid work or diverting same to other than carmen helpers is not authorized by the current agreement.

3. That accordingly the carrier be ordered to restore the aforesaid work to carmen helpers.

EMPLOYES' STATEMENT OF FACTS: At Bloomington, Illinois, the carrier maintained a packing reclamation plant in the car department for approximately 25 years, and whereat carmen helpers were regularly assigned to recondition all reclaimed journal box packing in addition to the preparation of new packing for journal boxes which were made available for use at all other points on the property. This is affirmed by:

- a) Copies of submitted letters, dated September 10, 1948, signed by Carmen Helpers George E. Meyers, W. A. Lawson, W. B. Kimler and F. A. Brandt, respectively identified as Exhibits A, A-1, A-2 and A-3.
- b) Copies of submitted bulletins issued by General Car Foreman H. A. Harris, dated April 18, 1941, July 8 and 14, 1944, respectively identified as Exhibits B, B-1 and B-2.
- c) Copies of submitted bulletins issued by general foreman of car department, B. J. Mangan, dated August 19 and 26, 1946, respectively identified as Exhibits B-3 and B-4.
- d) Copy of submitted bulletin issued by Shop Superintendent H. B. Osten, dated January 2, 1948, identified as Exhibit B-5.

The carrier discontinued the reclaiming of the journal box packing operation on September 13, 1947, and transferred said work to the Journal Box Service Corporation at Memphis, Tennessee. However, the carrier continued the preparation of the new journal box packing operation until June, 1948,

ment, as the carrier was free to do, it would have been performed by stores department employees.

The work is not embraced within the language of Rule 146, which is the only rule upon which the employees have prosecuted the claim. It is not part of or related to the maintenance of equipment, which is the work of carmen and helpers under the rules of agreement. In fact, your Board has held in Award No. 922 that there is nothing in the "nature of the work" of reclaiming journal box packing that makes such work exclusively the work of mechanical department employees. The carrier understands that in this award your Board held in effect that such work is not even related to the work of carmen helpers under the rules of agreement.

When in Award No. 922 your Board decided that the reclaiming of journal box packing was not of such nature as to make such work exclusively the work of mechanical department employees, your Board followed the same reasoning adopted in many other awards covering cases where although it was shown that carmen and helpers had regularly been performing certain work, such as coupling and uncoupling air hose, closing car doors, preparing cars for loading, your Board, nevertheless, found that such work is not exclusively the work of carmen and helpers but may be performed by any persons whom the carrier may choose to use for the service.

The carrier maintains that the reconditioning of used journal box packing and the preparation of new journal box packing is of such nature as to fall into the same category as coupling and uncoupling air hose, closing car doors, preparing cars for loading, and, therefore, is eligible to be performed by any persons whom carrier may designate.

In their prosecution of the case, the employees have referred to Award No. 924 by your Board and they may refer to it in their submission to your Board. The carrier maintains this Award is not pertinent and does not have a bearing in this case. In the case covered by Award No. 924, the carrier had contracted some of the upholstering of its passenger car equipment, notwithstanding the fact that "upholstering" was specifically covered by the scope rule in the agreement. Such a condition does not exist in the instant case, where the rule is silent as to the preparation of new journal box packing and the reconditioning of old packing.

Rule 146 refers to "car oilers and packers". In order that there be no confusion as to the meaning of "packers" as used in the rule, the carrier wishes to explain that the word "packers" has reference to the application of the packing to the journal boxes and not to the preparation of the packing. Car oilers are also car packers and vice versa.

Car oilers in the performance of their duties carry a bucket of packing and an oil can. In some cases they may apply the prepared packing and in other cases they may find all that is needed is some additional oil which they supply. This is the reason the rule refers to "car oilers and packers" as one classification and not as two separate classifications.

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.

Carrier calls our attention to the fact that the claim considered on the property was for monetary loss suffered by certain employes whereas the claim here presented is for the restoration of work. Even if true that fact would make no difference as the principle of either claim is the same, that is, the violation of the scope of the parties' agreement. The only difference

would be that the monetary feature has been dropped. We do not find this to be such a change as to defeat jurisdiction. The carrier must have been fully aware, by the claim as made and handled on the property, that the Brotherhood is contending that it was violating its agreement by having the work done in the manner here complained of.

Rule 146 of the parties, agreement effective July 1, 1946, so far as here applicable, provides:

"* * *, and all other work generally recognized as carmen's helpers' work, * * *."

This rule embraces all work which carmen helpers usually and customarily performed at the time of the negotiation and execution of the agreement but subject to past practice.

The record discloses that prior to 1931 The Alton Railroad, which is now the Eastern and Western Division of this carrier, had the work, which is here sought to be restored to carmen helpers, performed at various locations and by different classes of employees. However, in 1931 at Bloomington, Illinois, it was assigned solely to carmen helpers. At Bloomington the work was performed in the packing reclamation plant in the car department. Between 1931 and 1938 this type of work was all assigned to the packing reclamation plant at Bloomington except for what was being done at St. Louis, Missouri. At St. Louis the stores department employees, with the help of car oilers, continued to do it until it was either contracted to the Journal Box Service Corporation at Memphis, Tennessee, or assigned to the stores department at Meridian, Mississippi, as is hereinafter set forth.

It should here be stated that the reconditioning of old or reclaimed journal box packing was contracted to the Journal Box Service Corporation at Memphis, Tennessee, on September 13, 1947, and that the preparation of new journal box packing was transferred to the stores department at Meridian, Mississippi, in June of 1948. At that time the packing reclamation plant at Bloomington was shut down.

It is true that prior to 1931 it had not been the practice to have carmen helpers, or any other employees, do this type of work exclusively. It had been the practice up to that time to have laborers, stores department employees, or others, as well as carmen helpers, do it. However, commencing with 1931 and by 1938 apparently all of this type of work, except that being done at St. Louis, had been transferred to Bloomington and there assigned to carmen helpers in the packing reclamation plant. By this long continued assignment of this work to carmen helpers exclusively in the packing reclamation plant at Bloomington, Illinois, we find carrier abrogated its past practice in relation thereto and, at Bloomington, the carmen helpers were entitled to the exclusive right to perform it.

When this carrier bought The Alton Railroad as of June 1, 1947, it took it subject to its agreement with the mechanical crafts effective as of July 1, 1946.

In consequence of the foregoing did this carrier violate the agreement of The Alton Railroad with its carmen by contracting the work of reconditioning old or reclaimed journal box packing being done at the packing reclamation plant at Bloomington, Illinois, to the Journal Box Service Corporation of Memphis, Tennessee? It is well established that a carrier may not let out by contract to others the performance of work of a type which is embraced within its collective agreement with a certain class of employees. There are exceptions to this rule. One exception may be said to exist when it appears that the work requires equipment of a type which the carrier either cannot obtain or, if obtainable, it can only be obtained at a cost that is excessive or exorbitant, considering the amount of work involved.

It is evident, because of the lack of proper equipment, processes and facilities at Bloomington, that the work done there with reference to reconditioning old or reclaimed journal box waste was not satisfactory and that the

product resulting therefrom failed to meet the specifications of The Association of American Railroads with reference to reconditioned waste. This carrier, being a member of The Association of American Railroads, is obligated to comply with the rules thereof. In order to meet these specifications it would be necessary for carrier to purchase equipment not readily available on the open market and, when available, at a cost that is excessive and exorbitant considering the actual amount of work involved. Under this situation we think the carrier was justified in what it did in contracting the work to others. It would not be reasonable to require carrier to purchase such equipment.

What has been said of reconditioning old or reclaimed journal box packing is not true of the preparation of new journal box packing. Its preparation involves no problem of equipment and it is apparent that the facilities at Bloomington were and are adequate for the performance thereof. We find carrier violated its agreement with the carmen when it transferred this work to other employees at Meridian, Mississippi.

AWARD

Claim denied as to the work of reconditioning old or reclaimed journal box packing but sustained as to the work of preparing new journal box packing.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of February, 1950.