

Award No. 1380
Docket No. MC-1316-62
2-P&LE-LE&E-I-'50

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**UNITED RAILROAD WORKERS OF AMERICA, C.I.O. (Merged
with Industrial Union of Marine and Shipbuilding Workers of
America, C.I.O.)**

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That it is inconsistent with the current agreement to require car inspectors (carmen) to perform work of helpers' classification, thereby denying to the helpers work which rightfully belongs to helpers. Accordingly, the carrier be ordered to cease and desist from requiring car inspectors (carmen) to perform helpers' work and assign helpers' work to helpers who have a contractual right to such work.

EMPLOYES' STATEMENT OF FACTS: The carrier is assigning work of the "Carmen Helper" classification to car inspectors (carmen) and such work is now being performed by the car inspectors (carmen).

Up to a few years ago the work of helpers (yard car oilers) was performed by employes of the carmen helper classification. Positions of helpers (yard car oilers) have been discontinued and car inspectors are now required to perform this work.

Rule 28 of the controlling agreement specifically provides that work of the car oilers and packers is work accruing to employes of the helper classification.

Rule 27 of the controlling agreement does not include work of "car oilers."

POSITION OF EMPLOYES: It is respectfully submitted that the work of car oilers (helpers) is the work which must accrue to employes having seniority rights to such a class of work.

Rule 28 reading as follows:

"Rule 28

Carmen Helpers

Employes regularly assigned to help carmen and apprentices, employes engaged in washing and scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint

CONCLUSION:

The carrier's position may be summed up as follows:

1. Upon the facts shown in this case the relief sought would be detrimental to the best interests of certain of the carmen represented by the complainant organization, in that they would be reduced from carmen to carmen helpers, whereas they now enjoy the advantage of the higher rate of pay for performing work in a lower classification.

2. To sustain the instant claim would be contrary to the principles embodied in Rules 8 and 23 of the controlling agreement; which rules, when read in the light of the precepts of an "industrial" union, recognize the principle that lower rated employees may be used in higher rated positions if paid the higher rate.

3. The carrier's position that carmen may perform helpers' work if paid the higher rate is sustained by the piece-work schedule, which was in effect in the shops on carrier's property for a period of twenty-six years and which fixed piece rates for carmen covering work designated in other portions of the controlling agreement as carmen helpers' work.

4. The employes are bound by their acquiescence, without protest, to the recognized and established practice in effect on carrier's property at some points for the entire history of the railroad, and at other points for a period of twenty years, of having carmen perform the work of car oiling.

It is therefore respectfully submitted that the claim must 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 record discloses that there was no violation of Rule 27 insofar as the work here is involved.

Rule 28 in itself contemplates that a helper is what the name implies—"A Helper."

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1950.