

Award No. 1395
Docket No. 1324
2-AT&SF-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—COAST LINES

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement it is improper to assign carmen helpers to inspect cars for worn out journal brasses, cut journals and waste grabs, and that accordingly carrier be ordered to discontinue the assignment of carmen helpers to perform said work.

EMPLOYES' STATEMENT OF FACTS: At Richmond, California, the carrier regularly assigns car inspectors to the inspection of cars in the train yard, except the inside inspection of journal boxes for defects. This is affirmed by the copy of statement submitted, dated April 1, 1950, and signed by eleven car inspectors, identified as Exhibit "A".

The carrier also regularly assigns at this point in the train yard, carmen helpers (oilers) to the inspection of inside of journal boxes for defects in addition to the packing and oiling of journal boxes. This is affirmed by copy of statement submitted, dated April 1, 1950, and signed by nine car oilers, identified as Exhibit "B".

The agreement, effective August 1, 1945, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the inspection of such fundamental mechanical parts of cars as journals, journal brasses and the inspection for waste grabs is inherently and contractually the duty of mechanics and not the duty of helpers.

It is plainly to be seen from a careful collective examination of the first paragraph of Rule 29, which specifically states:

"None but Mechanics or apprentices regularly employed as such shall do Mechanics' work as per special rules of each craft. This rule does not prohibit foreman in the exercise of their duties, or foremen at points where no Mechanics are employed, to perform work."

including that part of Rule 102, reading:

attention of a four year qualified inspector is called to the condition and it is he, not the carman helper (car oiler), who makes the inspection and determines the action to be taken.

The fact that this carrier does not permit carmen helpers (car oilers) to "bad order" cars and does not permit carmen helpers (car oilers) to carry bad order cards or to attach bad order cards to cars should be evidence enough of the "non-inspection" status of carmen helpers (car oilers).

It is significant that in the adoption of our present rules and in particular shop crafts' Rules Nos. 102, 104 and 106 (c), which are quoted in full in the carrier's statement of facts, that no exception was taken during the rules negotiations leading to the adoption of the current agreement to the practices then as now being followed insofar as the duties and responsibilities of carmen helpers (car oilers) are concerned.

It must be obvious, that the claim which forms the basis for the instant dispute, is a matter for collective bargaining between parties to the current agreement and that the instant dispute amounts to nothing more or less than an attempt by the carmen's organization to secure through the medium of an award of the Second Division what it should endeavor to secure through the orderly procedure of collective bargaining.

It is significant too, that the duties and responsibilities of carmen helpers and carmen helpers (car oilers) vary to a considerable extent on different railroads. This is not an unusual condition, but a condition which is only the natural result of collective bargaining. Collective bargaining agreements on the lines of this carrier, with the exception of the so-called National Agreement, which came into being during the federal control of the railroads during the period of World War I, have resulted from across the table bargaining by the representatives of the carrier and labor organizations representing the employees of the various classes on the lines of this particular carrier.

As evidence that this carrier's practice does not represent a singular deviation from the practice on other railroads in the western territory, it has been ascertained that the duties and responsibilities of carman helpers (car oilers) on the lines of the carrier are no different than that on thirty-nine of the fifty-eight other railroads in contiguous territory.

It is the position of this carrier that the instant dispute seeks to impose an unjustified, wasteful and uneconomical restraint on the carrier in the assignment of work to carmen helpers (car oilers).

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 regularly assigned car inspectors at the Richmond, California train yard inspect cars for all defects except the inside of journal boxes for worn out journal brasses, cut journals and waste grabs, which inspection is made by carmen helpers regularly assigned to oiling, brassing and packing of journal boxes.

The question presented is whether or not, under the effective agreement, it was improper at such point for carmen helpers to perform such inspection work. In that connection Assignment of Work Rule 29 provided:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft."

Classification of Work Rule 102 provided:

"Carmen's work shall consist of . . . inspecting all passenger and freight cars both wood and steel . . . joint car inspectors, car inspectors . . ."

as provided in Rule 104 carmen helpers are:

"Employees regularly assigned to help carmen and apprentices . . . car oilers and packers . . . rebrassing of cars in connection with oilers' duties, cleaning journals . . ."

Rule 106 (c), one of three separate differentials for carmen helpers, provided for payment of a differential to helpers regularly assigned to oiling, brassing and packing of boxes.

It will be observed that provisions of the agreement above recited are not silent upon the question presented. Rather the inspection of all cars is therein clearly classified and defined as carmen's work required to be performed by them and not by carmen helpers. Under comparable circumstances this Division so held in Awards 812 and 1208.

Therefore the Division concludes that at Richmond, California, it was improper under the effective agreement for carmen helpers to inspect cars for worn out journal brasses, cut journals and waste grabs, and that the performance of such work by them at the point involved should be discontinued.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 18th day of July, 1950.

DISSENT OF THE CARRIER MEMBERS TO AWARD NO. 1395,
DOCKET NO. 1324 AND TO AWARD NO. 1396, DOCKET NO. 1325

We are impelled to dissent on the awards identified above because if there were ever two cases in which the rules involved when applied to the facts and circumstances certainly required negative awards, these two were and are such cases.

The record of both cases summarized briefly shows that "car oilers" (helpers) at Richmond, California, and at Argentine, Kansas, have been in existence since December 1, 1921. They were also in existence at the time the current agreement between the parties became effective on August 1, 1945. The duties and responsibilities of these employees—then and now—have been in connection with the cleaning of journals and the oiling, brassing and packing of journal boxes, all of which of necessity requires looking into the interior of journal boxes by those having such duties and responsibilities to determine whether, for instance, rebrassing is needed, or the packing dry to the extent of needing oiling, or the packing is out of place and should be re-packed, or the packing is old and should be renewed. Inspections for cut or rough journals have never been required of "car oilers."

This had been the situation in respect to the work of "car oilers" under earlier agreements and was the situation when, in 1943, the petitioning organization in these cases became the accredited representative of the class or craft of employees here involved. This situation also was well known to the parties negotiating the current agreement effective August 1, 1945, which they recognized by adopting rules containing the following as capable of embracing and covering work performed traditionally by "car oilers" for twenty-five years, more or less, for their employer:

Rule 104 Carmen Helpers.

"... car oilers and packers ... rebrassing of cars in connection with oilers' duties, cleaning journals ... and all other work generally recognized as carmen helpers' work shall be considered carmen helpers." (Emphasis supplied.)

Rule 106 Differential For Carmen Helpers.

"(c) Helpers regularly assigned to oiling, brassing and packing of boxes shall be paid two cents (2c) per hour above the minimum rate paid helpers at point employed."

Substantial proof was not produced in connection with the proceedings before this Division by the employees to show that the duties and responsibilities of the "car oilers" had been changed since the present agreement had become effective or that the carrier had violated any rule of the said agreement in respect to the work required of and performed by the "car oilers;" and to restrict the work of "car oilers", as the employees contend this work should be restricted, would simply be adding to the rules involved or writing a new rule which is not within the jurisdiction of this Division.

The position of the employees in these two cases would seem to be a matter of negotiation between the parties and beyond the authority of this Division to order the change requested by the said employees.

M. E. Somerlott

J. A. Anderson

C. S. Cannon

M. W. Hassett

A. G. Walther