

Award No. 1412
Docket No. 1330
2-AT&SF-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
SYSTEM

DISPUTE: CLAIM OF EMPLOYEES:

- 1—That under the current agreement the carrier improperly compensated upgraded Carman-Helper J. E. Stamm at the rate of pay of Class "B" Carmen instead of the rate of pay applicable to first class carmen effective on and since August 17, 1949.
- 2—That accordingly the carrier be ordered to additionally compensate this employe at the difference between the rate he received and the first class carmen's rate retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: At North Wichita, Kansas, in addition to positions of first class carmen and positions of regular carmen helpers, the carrier, effective August 1, 1945, created one additional classification, i. e., one position of a Class B carman, and the title holder of such single position was automatically acquired by Clifford J. Colyer as the result of his prior seniority service as a carman helper on July 11, 1928; his prior seniority service as truck and draft rigging differential helper on October 27, 1942; his promotion from such position on March 24, 1944, to the position of a first class carman, and there he has remained without having any occasion, through a reduction in force, to resume his rights as a Class B carman. However, this position of Class B carman was filled through August 1, 1945, by Carman Helper R. A. Powell until January 25, 1947, and thereafter with:

- 1—Carman Helper L. A. Karcher for the period of January 29, 1947, to November 3, 1947;
- 2—Carman Helper J. E. McConnell for the period of November 3, 1947, to February 19, 1948, at which time he accepted service as an apprentice;
- 3—Carman Helper Roedl for the period of February 25, 1948, to September 4, 1948, at which time he was laid off in a force reduction;

The instant dispute was first presented to a carrier representative on August 19, 1949, just about five months after the conclusion of the letter agreement with Mr. Ryan. No mention has been made of this letter agreement in the correspondence regarding the instant dispute and it is not known by the carrier whether the carmen's organization is using this means to refute the letter agreement or whether it is seeking to obtain through the medium of a Second Division award an interpretation of Section (i) of Appendix A which will support the unreasonable and illogical position which the organization is taking in connection with the instant dispute.

The carrier had not closed the door to an attempt to settle this dispute through the orderly process of collective bargaining and despite the obviously unreasonable nature of the claim the final appeal officer of the carrier, Mr. S. C. Kirkpatrick, made this offer to General Chairman Jamison in the last paragraph page two of his letter of February 9, 1950:

"In view of these facts and circumstances and considering that six or seven other helpers occupied the Class B position between January 29, 1947 and August 17, 1949, when Stamm was assigned, claim in his favor is no more justifiable than in the case of the several other helpers. I am willing, however, with the understanding that the back pay claimed in favor of Stamm is withdrawn, that the application of Section (i) of Appendix A be held in abeyance and discussed with the System Committee for a better understanding; otherwise the time claim is respectfully declined."

THE SOLE ISSUE BEFORE THIS BOARD IS SIMPLY WHETHER THE CHANGING OF CARMAN HELPER C. H. SALYER FROM A CLASS B CARMAN TO REGULAR CARMAN HELPER ON A TEMPORARY BASIS DURING THE PERIOD AUGUST 17, 1949, AND MARCH 23, 1950, BECAUSE OF HIS PHYSICAL CONDITION, CONSTITUTED A REDUCTION IN FORCE. It is the position of the carrier that the changing out of Salyer, the regular incumbent of the Class B position, with the Claimant J. E. Stamm did not constitute a reduction in force; that it was merely the substitution of one employe for another, and cannot be considered as having any effect on the rate to be paid on the Class B position. The Board's attention is directed to its Award 1287, dispute between System Federation No. 42 and the Atlantic Coast Line Railroad Company, reading in part:

"Neely's return from the armed forces, and the resultant displacement of Hutson as a helper, did not constitute a reduction in force * * *. **Reduction of forces means a decrease in the number of people employed, and, in this case, the total number of helpers was not decreased by the substitution of Neely for Hutson. * * ***

Claim denied." (Emphasis supplied.)

There is no support in the agreement for the claim and as it lacks merit, the Board is respectfully requested to deny it.

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.

Appendix "A" to General Agreement does not support the claim made in the instant case.

AWARD

Claim of employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Dorothy Fountaine,
Acting Executive Secretary.

Dated at Chicago, Illinois, this 5th day of December, 1950.