

Award No. 1479

Docket No. 1373

2-SAL-FO-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That the carrier is not authorized under the current agreement to use coach cleaners who are covered under an entirely different agreement, including separate and distinct seniority, in the performance of laborers' duties at Birmingham, Alabama.

2—That the carrier be ordered to compensate all laborers at Birmingham, Alabama, for all time lost since on and after March 31, 1949, account their duties being performed by coach cleaners together with restoration of all laborers presently furloughed while coach cleaners continue to perform their duties.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a force of laborers at Birmingham, Alabama with the January 30, 1950 issue of the seniority roster showing a total of 18 having seniority as such. Their duties are those performed by this class of employees in accordance with the current agreement.

Additionally, the carrier maintains a force of coach cleaners who are a part and parcel of the carmen's craft with the January 30, 1950 issue of the seniority roster showing a total of 13 being employed at Birmingham. Account arrival and departure time of train Silver Comet, the force of coach cleaners do not have sufficient work of their own to keep them engaged during their tour of duty and are assigned to laborers' duties for from five to five and one-half hours per day.

This case was handled from bottom to top with carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective November 1, 1946 as subsequently amended is controlling.

POSITION OF EMPLOYEES: The employees respectfully submit that it is not permissible to substitute coach cleaners who are under another and separate and distinct rules agreement for laborers at Birmingham, Alabama, thus depriving laborers of their contractual rights and employment. Management has laid particular stress on rates of pay involved, namely, that

leading up to the signing of these agreements which clearly indicates the employees' acquiescence therein.

It has been shown that no laborers were furloughed at Birmingham, Alabama, due to coach cleaners performing laborers' duties. Consequently, there is no compensation due the employees, as claimed. Furthermore, no laborers are now furloughed at Birmingham, as stated in the employees' claim.

Based on the showing made hereinbefore, the claims of the employees should be denied. The Seaboard Air Line Railroad respectfully requests the Second Division to do so.

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 employees 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.

Prior to May 1947, carrier employed ten coach cleaners at Birmingham, Alabama, who were under the agreement with System Federation No. 39, Railway Employees' Department, A. F. of L. They were assigned to clean coaches, and when not engaged in coach cleaning, to clean up around the shop and buildings and perform other unskilled work on the repair track in the car department. In May 1947, carrier placed the Silver Comet, trains Nos. 33 and 34, in passenger service in and out of Birmingham, arriving at 10:45 A. M. and departing at 2:00 P. M. Due to the short turnaround time, carrier placed five additional coach cleaners in service. From 7:00 A. M. to 10:45 A. M., the thirteen assigned coach cleaners do the clean up and other unskilled work hereinbefore described. This claim is made by laborers who are within the agreement between the carrier and the Brotherhood of Firemen and Oilers, Roundhouse and Railway Shop Laborers.

The work performed by the coach cleaners in cleaning up around buildings and shops, and the unskilled labor performed on the repair track, is clearly work assigned to laborers. It is a violation of their agreement to assign this work to members of another craft.

Carrier relies upon Rule 142, current agreement with the coach cleaners which states:

"Coach cleaners to be included in the agreement and will receive overtime as provided herein. Coach cleaners at outlying points may be worked eight (8) hours within a period of ten (10) consecutive hours.

They may be assigned to any other unskilled work during their eight-hour period of service."

We point out that this rule is between the coach cleaners and the carrier, but is no part of the controlling agreement with the shop and roundhouse laborers. It protects the carrier against claims by coach cleaners in the performance of unskilled work as set forth in the last sentence of the rule, but it is wholly ineffective to protect against claims by laborers having an agreement to perform the work.

Carrier contends that it has been the practice for many years to assign unskilled work to coach cleaners to fill out their assignment. This appears to be true, but the extent of the practice seems to have been greatly extended when the carrier added five car cleaners at Birmingham at the time the

Comet was placed in service. But in any event it is fundamental that a practice will not change the plain words of an agreement. A violation, mutually adopted by the parties, has the effect only of estopping claims prior to the date that one of the parties insists upon compliance with the agreement. When the agreement is indefinite or ambiguous, the practice may then constitute a controlling guide as to what the parties meant when the agreement was negotiated. But when the agreement is clear, acquiescence in the violation of an agreement operates only as an estoppel against retroactive reparations.

We are obliged to say that Claim (1) should be sustained as made.

Claim (2) is sustained as to all unskilled work performed by coach cleaners subsequent to the date claim was made to the carrier by the employees for this work. We decline to direct restoration of any furloughed employees. We merely hold that the work in question belongs to shop and roundhouse laborers.

AWARD

Claim (1) sustained.

Claim (2) sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1951.