

Award No. 1486

Docket No. 1402

2-IC-CM-'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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the dismantling of freight car trucks preparatory to removing defective wheels, bolsters, truck sides, etc., and the assembling of the trucks after the new parts have been applied is carmen's work, and not the work of carmen helpers.

2. That it is improper to assign or substitute carmen helpers to perform the aforesaid work, and that accordingly the carrier be ordered to discontinue utilizing carmen helpers to perform said work.

EMPLOYEES' STATEMENT OF FACTS: At Johnston car shop, Memphis, Tenn., carmen helpers are assigned to work on the opposite side of carmen in connection with the removal and renewal of freight car wheels, bolsters, truck sides, etc., in Bettendorf four wheel trucks.

These helpers perform identically the same work and use identically the same tools as do the carmen on their side of the truck, which consists of disconnecting and removing parts essential to the removal of the old parts. After the old truck parts are removed and the new truck parts are put in place, the helpers then re-assemble the same identical parts and use the same identical tools on their side of the truck as do the carmen on their side of the truck.

To effectuate the renewal of these aforesaid freight car truck parts, requires the removal on each side of the truck of many cotter keys, brake shoe keys, brake shoes, pins, brake levers, bottom brake rods, truck springs, spring planks, etc., and the proper assembling of all such parts after the truck parts have been renewed. These trucks are removed from under the cars by other assigned carmen and carmen helpers working on what is commonly called the spot system.

These facts are substantiated by copies of statements signed by Carmen Buck White, E. E. McCrary, Ed Matthews and Anderson Johnson and Carmen helpers Clarence Tate, Adolphus Brookins, B. H. Bowie, James Longstreet, William Rawls, L. White, Will Owens, Richard Anthony, Gus Bartley, and J. L. Buford, submitted herewith and identified as Exhibits A to N, inclusive.

employed by this railroad at East St. Louis that carman helpers were performing carmen's work in the dismantling and reassembling of freight car trucks under identical circumstances and practices as are in effect at Johnston car shops, Memphis. Your Board in that case denied the employes' claim stating that evidence did not support it. The qualifications of a carman (Rule 126) are defined in part as "Any man who . . . with or without drawings can lay out, build or perform the work of his craft . . . in a mechanical manner . . ." The classification of work rule (Rule 127) is defined in part as ". . . building, maintaining, dismantling . . . inspecting . . . freight cars . . ."

Building is here construed to mean uniting materials or parts, maintaining, to keep in a state of efficiency, dismantling, disconnecting materials or parts and inspecting for defects and wear limits previously described. The work in question covers no fabrication of individual materials or parts and is a repair operation only. The carman's work involved was to dismantle, renew and inspect certain parts. The only actual disconnecting and uniting of directly connected parts was removing truck, disconnecting top brake rod and brake beams. This particular work consumed only a small fraction of the time required in the dismantling and assembling of the freight car trucks. In fact, it would average only 15 or 16% of the time involved. A carman, in reality, therefore, performed helper's work to fill out his tour of duty and was paid the carman's rate for his full tour of duty because he is answerable for the completed job. This is the technical application of the agreement, and while it is not the existing practice, your Board held in Award 273 that although the carrier did not use its rights under the agreement, such rights are not destroyed.

The theory of the carmen's special rules is reflected by the practice which, of course, preceded the theory. In negotiating the current agreement, every effort was made to perpetuate the then existing practices, and we contend there has been no change in such practices with respect to the performance of this work. In support of this, submitted herewith and identified as carrier's Exhibit No. 1 are sworn statements from present supervisors at Memphis as well as car repairers, verifying the practice that has been in effect for many years preceding the effective date of the current agreement with the brotherhood. These car repairers hold seniority on the current carmen's roster at Johnston car shops and are all thoroughly familiar with the repair operations.

The claim before your Board is nothing more than a request to replace a helper with a carman contrary to the schedule agreement. The established practice is not in conflict with any of the provisions of the agreement. In fact, this was a practice or working condition that was in effect when the schedule was negotiated and is of a nature specifically covered by the language in Rule 129 reading, ". . . and all other work generally recognized as carmen helper's work . . ."

The Railway Labor Act, as amended, (Section 6) prohibits changing working conditions without agreement and as has been stated by your Board in many previous awards, it is the function of this Board to interpret agreements and not to make agreements; therefore, the claim should be denied in its entirety.

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 waived right of appearance at hearing thereon.

The organization contends that at Johnston Car Shop, Memphis, Tennessee, carmen helpers are assigned to perform the work of carmen in con-

nection with the removal and renewal of freight car wheels, bolsters, truck sides, etc., in Bettendorf four wheel trucks. It is claimed that in doing this work, helpers use the same tools in disconnecting and removing parts and, after the trucks are repaired, helpers aid in reassembling by using the same tools and doing the same work as carmen. It is also claimed that helpers work opposite carmen in removing freight car truck parts and that each is required in so doing to remove many cotter keys, brake shoe keys, brake shoes, pins, brake levers, bottom brake rods, truck springs, spring planks, etc., and the assembling of such parts after renewals and repairs have been made. The claim is that such work be declared to be carmen's work and that it is improper to assign such work to carmen helpers under applicable rules.

The carrier in its submission denies that the work is being performed in the manner that the organization asserts and contends that the work is being done in accordance with the agreement and the practice which has been in existence on this railroad for many years. Due to the general nature of the claim and the want of any claim for reparations, we shall not attempt to resolve every question of fact that is here raised. That feature will become more important when and if specific claim for rule violations are made. Insofar as applicable here, carmen's work is defined by Rule 127, current agreement as follows:

"Rule 127. Carmen's work shall consist of building, maintaining, dismantling (except destroying freight train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, . . . and all other work generally recognized as carmen's work."

The work of carmen helpers so far as applicable to this dispute is defined by Rule 129, current agreement, as follows:

"Rule 129. Employees regularly assigned to help carmen and apprentices, . . . car oilers and packers, . . . operators of bolt threaders, nut tappers, drill presses, and punch and sheer operators (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side set, and backing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, . . . and all other work generally recognized as carmen helpers' work, shall be classed as helpers."

It cannot be questioned, of course, that any work spelled out in Rule 129 may properly be performed by carmen helpers. We think it is clear also, that such residuary clauses as "employees regularly assigned to help carmen and apprentices" and "all other work generally recognized as carmen helpers' work" do not authorize carmen helpers to perform work which has been assigned to carmen by Rule 127.

The repairing of freight car trucks is carmen's work. The removal of cotter keys, brake shoe keys, brake shoes, pins, brake levers, bottom brake rods, truck springs, spring planks, and all other such work, is carmen's work which a carman helper may not properly perform whether working alone, with, or opposite a carman. Helping a carman does not mean that a helper may do a carman's work. The work a helper may do in helping a carman is such unskilled work as is necessary in expediting the work of a carman such as lifting or lowering heavy parts, pulling or pushing in removing or assembling parts, performing unskilled and common labor in furthering the work of the carman jacking and blocking up of cars or parts thereof, and such other work as is spelled out in Rule 129. See Awards 1273, 1174. We think Rule 129 authorizes a helper to use a hammer or sledge in assisting a carman in straightening metal parts and in connection with a carman's use of a chisel, side set, back out punch, and the like. But it does not follow that a carman helper can do the skilled work of a carman mechanic even though he may work under his direction.

We have examined Award 556 of this Division. The claim made in that case was denied for the reason that the evidence was insufficient to support

an affirmative award. As a precedent it is of little value although the facts alleged were similar in many respects to those in the dispute before us. It was decided on want of proof of the facts rather than on the meaning of rules applicable to established facts. In many respects, the parties to the instant dispute are not far apart on the general principles involved. But general principles do not always resolve concrete cases. We can interpret the applicable rules in this case but, in the final analysis, the line of demarcation between carmen's work and heler's work will be developed by the determination of claims in specific cases. We think the position of the organization generally is correct, assuming of course that the allegations of fact upon which the interpretation is requested can be established as a true recital of the facts.

We think that claim one is properly sustainable as made. Claim two is sustainable to the extent set forth in the foregoing findings.

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 3rd day of August, 1951.