

Award No. 1592

Docket No. 1498

2-ART-CM-'52

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:

**BROTHERHOOD RAILWAY CARMEN OF AMERICA
RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.**

AMERICAN REFRIGERATOR TRANSIT COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement, Carmen Helpers L. C. Garcia and C. Vigil are entitled to be additionally compensated in the amount of nine and one-half (9½) cents per hour for all service performed as car oilers since May 9, 1951, and that accordingly the carrier be ordered to so compensate the employees.

EMPLOYES' STATEMENT OF FACTS: At Pueblo, Colorado, the American Refrigerator Transit Company, hereinafter referred to as the carrier, maintains a shop where refrigerator cars are rebuilt and repaired. L. C. Garcia and C. Vigil, hereinafter referred to as the claimants, were employed by the carrier at Pueblo, Colorado, on March 8, 1951 and March 22, 1951, respectively, as carmen helpers, and were regularly assigned from 7:30 A. M. to 12:00 Noon, and from 12:30 P. M. to 4:00 P. M., and have remained continuously in the service of the carrier.

On May 9, 1951, the carrier assigned the claimants to the position of car oilers, which is a bulletin and a differential rate of pay position under the current agreement, and the carrier refused to compensate the claimants on the ground that the claimants were not engaged in performing car oilers duties.

The agreement effective December 1, 1944, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that carmen helpers (car oilers) so assigned by bulletin, or otherwise, have since November 1, 1939, received a differential rate of pay above that of regular carmen helpers, which originally was eight (8) cents per hour, and as of September 1, 1949, has become nine and one-half (9½) cents per hour, and is confirmed by Rule 61, in part reading:

"CLASSIFICATION	RATE PER HOUR
Carmen Helpers—Oilers, Box Packing, Rebrassing, Inspecting Journals, Brasses & Wedges	1.51
Carmen Helpers—All Classes	1.41½"

(4) That oilers shall receive 65¢ per hour. And it is agreed to make separation on seniority roster between truckmen and oilers positions," * * * *. (This letter covered other subjects not related to this dispute which are not quoted.)

The agreement reached regarding assignment of carmen helpers-oilers and carmen helpers as outlined in the memorandum of August 23, 1940, and as acknowledged in Mr. Thier's letter of September 28, 1940, was incorporated in the controlling agreement effective 12-1-44. The work of "car oiling, packing, rebrassing," was retained in the helpers' classification of work rule and rate of pay Rule No. 61 was revised, in part, to read: "Carmen Helpers-Oilers, box packing, rebrassing, **inspecting journals, brasses and wedges**", to pay a differential rate which amounts to 9½¢ per hour in May 1951. (Emphasis added).

There are submitted herewith and identified as Exhibits A, B, C, D, E and F, copies of all correspondence with the organization regarding this dispute.

Acting General Chairman Ryan's letter of May 9, 1951, Exhibit A, filing this claim states that Carman Helpers Garcia and Vigil were assigned the "job of removing packing from oil boxes in the Pueblo Shop" and makes no claim that carman helpers did the oiler's work of inspecting journals, brasses and wedges. Mr. Ryan's next letter of August 28, Exhibit C, was addressed to the vice-president and does not give the detail of the basis for his claim.

Mr. Thier then progressed the matter under date of December 21, 1951, Exhibit E. Mr. Thier's letter was answered on December 31, Exhibit F, in which Mr. Finkenaur states:

"I have reconsidered both claims and I think the arguments support the Company's position and that nothing further would be gained by a conference; however, if you can find any support whatever for your position and desire to discuss the matter with me, please advise and I will suggest a date."

Mr. Thier has not advised of any support for his position in this claim and did not reply to Mr. Finkenaur's letter. There have been no conferences on this dispute and no further correspondence until a letter was received from the Secretary of your Board advising that the dispute had been filed.

The Carrier maintains that the temporary assignment of carmen mechanics at the full rate of pay to do oiler's work is proper and that assignment of carmen helpers to do work which is set out in the carmen helper's Classification of Work Rule as carman helper's work, at carman helper's rate of pay, is proper, and respectfully requests your Board to so find.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimants were regularly assigned as carmen helpers at Pueblo, Colorado, on the days designated in the claim. On and after May 9, 1951, it is alleged that they were assigned to perform the work of car oilers which would entitle them to a differential in pay of 9½¢ per hour. Rule No. 61. Agreement of September 1, 1949, provides in part:

* * * * *

"Carmen Helpers—All Classes \$1.41½
 Carmen Helpers—Oilers, Box Packing, Rebrassing, Inspect-
 ing Journals, Brasses and Wedges 1.51"

It is clear to us that the quoted portion of the rule means that carmen helpers generally will be paid on the basis of \$1.41½ per hour, but when they are used as oilers, or in box packing or rebrassing, or in inspecting journals, brasses and wedges, they will receive an additional nine and one-half cents per hour. The carrier asserts that the differential applies only where inspection work is involved. With this we do not agree. The language used is plain and unambiguous and not subject to construction. It must be deemed to represent the intent of the parties at the time it was entered into and to exclude from consideration what has gone before. It is only when there is an indefiniteness of meaning in the language used that we may examine the history of the rule and the interpretations placed upon it to discover the intended meaning of a rule. When the language used is plain, simple and clear, we must give it its plain meaning without the guides usually employed in determining the intention of the parties when ambiguous statements appear in a rule.

In the present case, claimants were used to remove packing from oil boxes, and place it in containers preparatory to reclamation which is a part of the operation of repacking a journal box. They were not used in inspecting journals, brasses and wedges. Box packing is, however, a designated part of the work for which the differential is paid. Consequently, the differential rate of pay of \$1.51 per hour was the applicable rate.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
 By Order of Second Division

ATTEST: Harry J. Sassaman
 Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1952.