

Award No. 1782

Docket No. 1703

2-PTRRA-CM-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

PORT TERMINAL RAILROAD ASSOCIATION

DISPUTE: CLAIM OF EMPLOYES: That the carrier violated the current agreement by the assignment of Carman Helper W. P. Hill to fill the vacancy of a carman mechanic position job number 775 with hours 11:00 P.M. to 7:00 A.M., Thursday, July 24th, Saturday, July 26th, Sunday, July 27th, and Monday, July 28th, 1952.

That accordingly the carrier be ordered to additionally compensate Car Inspector C. L. Nix in the amount of eight (8) hours at the time and one-half rate on date July 24, 1952, Car Inspector S. L. Chase in the amount of eight (8) hours at the time and one-half rate on date July 26, 1952, Car Inspector W. H. Klein in the amount of eight (8) hours at the time and one-half rate on date July 27, 1952, and Car Inspector H. L. Carpenter in the amount of eight (8) hours at the time and one-half rate on date July 28, 1952.

EMPLOYES' STATEMENT OF FACTS: Car inspector mechanic's position job number 775 in the North Yard, with assigned hours 11:00 P.M. to 7:00 A.M. five days per week, Thursday through Monday with Tuesday and Wednesday off as rest days became vacant, the carrier placed Carman Helper W. P. Hill who held no seniority or the qualification as a carman mechanic on the mechanic's position job number 775 on dates July 24, 26, 27, and 28, 1952. Car Inspectors C. L. Nix, S. L. Chase, W. H. Klein and H. L. Carpenter who hold seniority as carmen mechanics were available to work the car inspector mechanic's position job number 775 on dates July 24, 26, 27, and 28, 1952. There is no promotion agreement in effect between System Federation No. 14 and the Port Terminal Railroad Association where helpers can be promoted to mechanics, or helpers can be used as mechanics.

The agreement effective March 1, 1952 is controlling.

POSITION OF EMPLOYES: The question involved in this dispute is the alleged right of the carrier to use carmen helpers to perform the duties of

The carrier does not understand how, in view of the supplemental agreement of March 14, 1951, a claim such as the instant one can be prosecuted. At the time the supplemental agreement was entered into there was no understanding other than the supplemental agreement itself. The attention of your Board is directed to the agreement dated June 4, 1953, between the "Three Carriers Conference Committees" and the carmen's organization wherein, as Article 3, a rule similar to our agreement of March 14, 1951, is contained. The agreements are alike in that the termination feature with respect to an upgraded helper is that upon completion of 1,040 days service as a carman, the helper gains the status of a qualified carman. Plainly there is no basis for the instant claim and the carrier requests its denial.

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.

Carmen Helper W. P. Hill was used to fill the vacancy of a carman mechanic position on July 24, July 26, July 27 and July 28, 1952. It is the contention of the organization that a carman helper had no right to this work. Claimants were available to perform the work on an overtime basis and their claim is for the work lost.

Under Rule 19, current agreement, the work belongs to employes holding seniority as carmen. The carrier asserts an agreement, bearing date of March 14, 1951 made by the general manager of the carrier and the local chairman of the organization specifically authorizing Carman Helper Hill to be used in filling carmen's vacancies when qualified carmen are not available. Carman Hill was so used continuously from March, 1951 to July, 1952.

There is a contention made that it was necessary to renew this agreement each time Carman Helper Hill was used as a carman mechanic. We do not think this is a meritorious argument in view of the fact that the agreement does not so provide. The agreement contains no time limit and we must assume that it was effective insofar as time limits are concerned until notice of cancellation was given.

The organization further contends that the Local Chairman was without authority from the organization to agree to a violation of the schedule agreement. The carrier asserts that it entered into such agreements in good faith on and after November 3, 1949. Carrier states that upgraded carmen helpers have been used as carmen both prior to and after the present claim was initiated pursuant to similar agreements without objection until the present claim was filed.

We find nothing in the record to show that the organization or its general chairman had knowledge of or acquiesced in the agreements purported to have been made by the local chairman. If such was the fact, the record is devoid of any proof thereof. We think that an unauthorized agreement can be validated by acquiescence but there must be some proof of knowledge and acceptance. Such acceptance can be express or by conduct constituting an estoppel. But where there is no such proof, the claim of want of authority to make the agreement must be sustained.

Claim for work lost is sustainable, however, at the value of the work as fixed by the agreement, to wit; the pro rata rate.

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AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1954.