Award No. 2567
Docket No. 2375
2-P&LE-CIO-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That it is in violation of the agreement or practice in effect at the time this claim was presented to have carmen perform the work of helper's, while helpers are furloughed.

That Mr. A. Blazer, furloughed helper, be compensated eight (8) hours for each day that a carman was used to operate the tractor.

EMPLOYES' STATEMENT OF FACTS: That Mr. A. Blazer was furloughed as a helper when this violation took place.

That Mr. A. Blazer is entitled to eight (8) hours pay for each day that a carman operated the tractor while Mr. Blazer was furloughed.

That the Railroad Division, Transport Workers Union of America, AFL-CIO has a collective bargaining agreement, effective May 1, 1948, with The Pittsburgh & Lake Erie Railroad Company and The Lake Erie & Eastern Railroad Company covering carmen, their helpers and apprentices, copy of which is on file with the Board and is by reference hereto, made a part of the statement of facts.

That Mr. A. Blazer was and is an employe of the carrier, but was furloughed at the time this claim was filed.

POSITION OF EMPLOYES: That the work of operating a tractor belongs to helpers and not carmen under the controlling agreement and practices.

CONCLUSION

The carrier's position may be summed up as follows:

1. The carrier's position that Rule 28, "Carmen Helpers" does not prohibit carmen from performing any of the work specified therein has been sustained by your Board in Award 1380.

2. Carmen have always performed work covered by Rule 28.

3. The employes are bound by their acquiescence to the recognized application of the rules in effect on the carrier's property since the rules were first adopted.

4. There was no violation of the agreement.

5. Carrier has shown that it has been the practice for carmen to use tractors and their use in the manner complained of is not such as may be done by helpers only.

It is respectfully submitted that the claim is without merit and therefore, must be denied.

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 the dispute were given due notice of hearing thereon.

This is a claim on behalf of a furloughed carman helper for eight hours pay each of the dates, April 1, 4, 5, and 6, 1955, when it is alleged that a carman welder performed helper's work. It appears from the record that on each of the above dates a carman welder operated a tractor in moving portable electric welding machines used by him and by another welder to different locations in the same shop. Each of said movements said to have consumed less than an hour.

The organization says that operating tractors is work which belongs exclusively to carmen helpers. The record discloses that this is, in the main, true but that it has been subject to certain limitations and exceptions. For example, it appears that carmen have operated tractors incidental to their work at places where helpers are not employed and there also appears to have been occasions when tractors have been left attached to equipment used by carmen and they have moved the equipment for short distances by means of tractors.

A problem of the character presented by this claim must be approached with a measure of moderation and common sense. This Board is not disposed to commit itself to the proposition that the slightest deviation from a prevailing practice should be regarded as a violation. On the other hand an organization is entitled to be protected against a gradual taking away of its contractual rights.

We are constrained to resolve this dispute in favor of the claimant by reason of the following significant facts: (1) The carrier had two helpers on duty and others on furlough at the time the incident occurred, (2) the violation is not predicated on a single incident but continued over a period of four days: (3) the carman's activity was not limited to the moving of his own equipment, but also embraced the moving of the equipment used by another carman; and (4) the carrier has always advertised the tractor job (at "Y" Shop, McKees Rocks, Pa.), as a helper's job and awarded it to a helper.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.

CARRIER MEMBERS DISSENT TO AWARD 2567

The claim in this dispute recognizes the well established rule that there is no general bar against mechanics performing any work of their craft, but alleges this carrier is bound by agreement or practice to not require or permit the performance of helpers' work by carmen **while helpers are furloughed.**

The record is void of any evidence of probative value to support the organization's allegation and the claim should have been denied.

The award of the majority in this dispute is in conflict with Award No. 1380 of this Division and does violence to the rights of mechanics to perform their work to a successful conclusion.

For these reasons we dissent.

R. P. Johnson

J. A. Anderson

E. H. Fitcher

D. H. Hicks

M. E. Somerlott