

Award No. 2587

Docket No. 2295

2-L&N-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Carrier on March 16, 1954, and subsequently, improperly assigned Carman Helper N. J. Williams to position of (carman) mechanic.

2. That accordingly carmen on the overtime board at Montgomery, Alabama be additionally compensated for 8 hours at time and one-half (equally divided) for each day of such assignment, excepting March 16, 1954.

EMPLOYEES' STATEMENT OF FACTS: On the night of March 16, 1954 the carrier increased their train yard carmen (car inspector) forces beginning at 11 P.M. This force increase was accomplished by promoting Carman Helper N. J. Williams to the position of (car inspector) carman.

The carman assignment given this carman helper was 11 P.M. to 7 A.M., train yard, Friday through Tuesday, rest days, Wednesday and Thursday. On Friday, March 19, 1954 after working one shift (with two rest days) he (Williams) was reduced to carman helper.

On March 23, 1954 Carman Helper Williams was again promoted to carman (same assignment) working this date, rest days March 24 and 25, working March 26 through 30 (rest days March 31 and April 1) and reduced to carman helper on April 2, 1954.

On April 9, Carman Helper Williams was again promoted to the position of carman, working as such through April 13, rest days April 14 and 15, working April 16 through 19 on this 11 P.M. to 7 A.M. train yard assignment.

It is the conclusion on the facts of record in this case that the carrier violated the terms of the September 1, 1943 agreement and substituted a carman helper for a carman in this case and the claim of the employes should be supported in its entirety by the Honorable Members of this Division.

CARRIER'S STATEMENT OF FACTS: On March 16, 1954, N. J. Williams, carman helper, Montgomery, Alabama, was used as carman on an advertised vacancy. From March 17, 1954 until March 23, 1954, no one was used on vacancy but on this latter date Williams was assigned account of no bids being received. Williams worked the position, as an upgraded carman helper, until March 30, 1954, on which date he was displaced by G. E. Dansby, a qualified carman. On April 5, 1954, Dansby resigned as carman and on April 8, 1954 Williams was again upgraded and assigned to the vacancy. On April 20, 1954, Williams was returned to helper due to Car Inspector D. F. Linde being transferred from New Orleans, La. Williams worked as car inspector March 16, 23, 26, 27, 28, 29, 30, April 9, 10, 11, 12, 13, 16, 17, 18, and 19.

POSITION OF CARRIER: This carrier has had in effect for many years—as has most of industry—an age limit in the hiring of personnel for the various classifications necessary in the successful operation of a railroad. So far as it pertains to car inspectors the maximum age limit for hiring is 42. This carrier, from time to time, has found it necessary to employ carmen over the normal age limit due to the urgency of the situation in providing essential service to our patrons. It was in such an emergency that this carrier saw fit to waive the age limit in the employment of three carmen at Montgomery, Alabama. There is no rule in the agreement which makes it mandatory that any carman—regardless of age or physical condition—be employed. None of the regularly assigned carmen at Montgomery, Alabama, were deprived of a position because of this carrier's action in upgrading helpers, and the carmen helpers upgraded were fully qualified to perform the work.

It is carrier's position there is no support to the contention of the employes that the carrier is without authority in specifying the age limit of those whom it is to employ. Their request in this instance is, therefore, without merit and should 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 said dispute were given due notice of hearing thereon.

This dispute involves the application of the agreement rules to the following undisputed facts.

Claimant Williams was a carman helper who was upgraded on March 16, 1954, while the position was being bulletined. This has since been admitted to have been an error, because Rule 18 (f) requires in such circumstances that the overtime board be used to supply the needed man while the bulletin is up.

Because no bids were received on the bulletin, Helper Williams was again upgraded upon its expiration. It is the subsequent upgrading which has been challenged by the organization. In defense of its action, the carrier points to Article III of the upgrading agreement of June 1, 1953, which states, "In the event of not being able to employ carmen with * * * experience * * * apprentices will be advanced * * *. If more men are needed helpers will be promoted." The carrier says no carmen were available. The organization names three (3) men who were available, but the carrier claims those men had all been out of service more than two (2) years and were all over forty-two (42) years of age.

The facts may be summarized by stating that the company needed a man, and not having any qualified men working, had to decide whether to upgrade a helper or go outside and make a new hire. In considering the possibility of outside hires, the question of whether the carrier was warranted in establishing an age standard has been decided affirmatively by Award No. 2522 of this Division. We adhere to that conclusion as valid for our consideration herein.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1957.