

Award No. 3191
Docket No. 2955
2-NYC-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting, when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier is improperly and in violation of Rule No. 163, denying Carmen Helpers (Oilers) in train yards the right to use blue flags by day and blue lights by night.

2. That, accordingly, the Carrier be ordered to issue instructions permitting Carmen Helpers (Oilers) in the Elkhart, Indiana, train yards to use and display blue flags and blue lights in conformity with the Agreement.

EMPLOYES' STATEMENT OF FACTS: On May 22, 1956, the general foreman of the New York Central System, hereinafter referred to as the carrier, at Elkhart, Indiana, instructed the carmen helpers (oilers) to discontinue the use of blue flags and blue lights in the performance of their work.

These instructions of the general foreman abrogated a practice in accordance with Rule No. 163 that has been in effect for more than 35 years in the Elkhart train yard, whereby blue flags and blue lights have been used for the protection of the employees working on trains in these yards. In support of the foregoing there is submitted herewith, identified as employees' Exhibit A, a statement signed by three car repairmen and eleven car inspectors.

Under date of June 2, 1956, General Chairman McGuinness wrote Master Mechanic Rasor in regard to the carrier's non-compliance with Rule

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.

Parties to said dispute were given due notice of hearing thereon.

It is shown that for more than 35 years carmen helpers (oilers) were afforded blue flag and blue light protection pursuant to Rule 163 while servicing journal boxes at Elkhart, Indiana. On May 22, 1956, the carrier directed that such protection be discontinued.

In our Award No. 1764 we held that such protection was not required by an identical rule, because it had never been the practice to afford it for such service and such practice showed the intent of the parties when the agreement was made.

The practice here has been to afford such protection so we are bound to find that these parties intended such service to be comprehended by the rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1959.