

Award No. 3211
Docket No. 3036
2-P&LE-TWUOA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA
RAILROAD DIVISION**

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, THE

LAKE ERIE AND EASTERN RAILROAD COMPANY, THE

DISPUTE: CLAIM OF EMPLOYEES:

June 6, 7, 12, 13, 1957, Foreman J. Jakubiak was working as a hook-on on the electric buggy. This work belongs to helpers and the Organization feels that Rule 26 was violated. For this reason the Organization is asking that M. Delmonte, helper, be compensated eight (8) hours for each day that Foreman worked as hook-on.

June 6, 1957, P. Estock, Car Repairman was used as a hook-on in the Fabricating Plant. This work belongs to helpers. The Organization feels that Rule 26 was violated. For this reason the Organization is asking that helper N. Senyko be compensated eight (8) hours for the day worked by Carman Estock.

June 17, 1957, Foreman Jakubiak again worked as hook-on on electric buggy. Again Rule 26 was violated. For this reason the Organization is asking H. Higley be compensated eight (8) hours for this day as a helper.

June 17, 1957, Foreman Johnson was unloading and carrying material. This is a violation of Rule 26. Not only is this a violation of the agreement but the Carrier has always claimed that foremen are supervisors and are not to do the work of the employes. For this reason the Organization is asking that J. Cencic, helper, be compensated eight (8) hours for this day.

On July 2, 1957 more claims were filed by the Organization under Rule 38, paragraph (f) pending settlement of original claims.

Particular attention is directed to the fact that Rule 26 of the current carmen's agreement involved in the instant case is identical with Rule 28 of the carmen's agreement which was involved in the case covered by Award No. 1380.

CONCLUSION:

The carrier has shown that the carmen's organization is attempting to obtain a decision that would restrict the rights of supervisors in the performance of their duties and inject into railroad operation a status of rigidity which is not feasible. A certain amount of flexibility must exist in railroad operation, essential to the welfare of the employes and the carrier, in order to maintain a proper employer-employee relationship and to enable each to derive the benefits to which he is entitled.

The carrier has conclusively shown that the work of delivering material and hooking-on is not exclusively the work of helpers and has always been performed by carmen under varying circumstances.

The carrier has shown that the claims are so vague and indefinite as to preclude any award other than one of denial or dismissal.

Awards of the National Railroad Adjustment Board have been cited in support of the carrier's position.

The carrier respectfully submits that these claims are entirely devoid of merit and should be denied or dismissed.

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.

In this docket the union claims that Rule 26 was violated. The rule is a classification of work rule which enumerates some of the duties of a helper and concludes with the catch-all phrase, "and all other work generally recognized as carmens' helpers' work, shall be classed as helpers".

This rule does not contain any language establishing that such work shall belong **only** to helpers. It is descriptive, not exclusive.

It follows that a helper should be used wherever and whenever helping is required. This does not mean that a higher rated mechanic cannot help himself in a simple situation or that in every instance a helper should stand by to provide help if the need arises.

This finding does not extend or grant to supervisors, who are not protected by this agreement, any authority to do work of the craftsmen under them. They should be limited to supervising, instructing, and demonstrating, but not to the point where they produce.

In trying to apply these findings to the facts of record we are confronted with a lack of detail which creates difficulty. We believe that a foreman or any other person should be permitted to throw a switch in a true emergency to avoid a collision. The union, however, does not allege this as a violation occurring at a particular place on a certain date and the carrier indicates that it may or may not have occurred on one of the five dates mentioned.

A slightly different circumstance is presented by the instance admitted by the company, exact date unknown, when the foreman steadied a steel angle and released the crane hook. This would be an invasion of the organization's right to do the work.

Our findings in Award No. 3208 (Docket No. 2977), with reference to grouping claims and the resultant mingling and obscuring details are equally applicable herein. However, in this claim the facts should be readily ascertainable and can be made the subject of further conference on the property so that the orderly progression desired by the Railway Labor Act may be secured.

AWARD

The claim is remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1959.