

Award No. 3220
Docket No. 3100
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

LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

On June 10 and 11, 1957, N. Tresko, Tractor Operator was used to assist Carmen in jacking in ends of box cars. First he was required to lift the jack with his tractor and then to operate the hydraulic jack. This again happened on June 12, 13 and 14, 1957.

This work has always been done by Carmen and the Organization feels that Rule 25 of the agreement was violated.

For this reason the Organization is asking that N. Tresko be compensated the difference between the helpers and the carmen's rate of pay for the days mentioned above.

EMPLOYEES' STATEMENT OF FACTS: That on the dates mentioned above N. Tresko, tractor operator was required to do work that has never before been required of a helper, that is to help carmen to straighten box car ends.

That this case was handled on the property of the carrier and is known as Case M-151.

That the job of straightening box car ends has always been advertised as carmen jobs and the work done by carmen, employes' Exhibit No. 1.

In Award 556, the Board stated:

"The employes contend that carmen helpers worked opposite carmen and were performing the same work. The carrier contends that the helpers were assisting the carmen and performing the work generally recognized as helpers' work.

"The evidence in the instant case does not support the employes' claim.

"AWARD: Claim denied."

CONCLUSION

The carrier has shown that the work performed by carmen helpers in assisting carmen straightening steel ends of box cars is work properly falling within the scope of Rule 26 of the carmen's agreement and that the particular work involved, the operation of an air valve under the direction of a carman, is not in itself carman's work and requires no more skill to perform than the other permissible items of work enumerated in the carmen helpers' rule.

The carrier has also shown that although carmen helpers had not been used previously to assist carmen in this work when a different type of equipment was used, this did not prevent the assignment of helpers to this work when the carrier changed the equipment used, nor did it serve to eliminate that right of carrier from the agreement.

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

The carrier respectfully submits that the claim is entirely 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.

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

In this docket the employes claim that on June 10, 11, 12, 13 and 14, 1957, a tractor operator who is classified as a carman helper "was used to assist carmen in jacking in ends of box cars. First he was required to lift the jack with his tractor and then to operate the hydraulic jack".

The carrier does not deny the facts but points to Rule 25, Classification of Work which reads in part:

"Carmens work shall consist of * * * maintaining * * * all * * * freight cars".

Carrier also depends on Rule 26, Carmen Helpers, which in pertinent part reads:

“Employes * * * assigned to help * * * assisting carmen in straightening metal parts of cars, * * * shall be classed as carmen helpers”.

The employes argue that because the company in the past did not require helpers on this particular straightening chore, that it is now forbidden to avail itself of the rule; that the practice supersedes the clear meaning of the rule.

We cannot agree with this theory. Practice is looked to in order to ascertain the meaning of an ambiguous rule. Practice is considered to prove what the parties intention was when a rule was adopted, if the meaning is now in doubt.

Since the new method has been developed, using hydraulic power, the question is, must the old practice be continued? It is shown that the helper works under the direct orders of the carman who is responsible under the rule for such repairs. We take special note of the fact that the claim states “was used to assist carmen”.

We conclude that the claimant was doing helpers work.

AWARD

The claim is denied.

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.