

Award No. 3250

Docket No. 2992

2-SP(PL)-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the New York Agreement, effective June 1, 1953, following Carmen Apprentices: R. C. Garcia, D. Carreon, E. S. Romero, A. N. Garza, A. P. Montes, Henry Amparan, Jr., Raul Arreola, Trini Guillen, Jose Aguilar, and Ramon Camarillo (hereinafter referred to as the claimants), were not upgraded in compliance with the provisions of Article III of said Agreement, and which agreement became effective, on aforementioned date, between the Brotherhood Railway Carmen of America and the Eastern, Western and Southeastern Carriers, and to which Agreement the Southern Pacific Company (Pacific Lines) (hereinafter referred to as Carrier) is a signatory participant, and has violated provisions of Article III of the New York Agreement when Claimants were not upgraded ahead of carmen helpers. Article III clearly specifies and provides that all regular and helper apprentices will be advanced to carmen in accordance with their respective seniority.

2. That accordingly Carrier be ordered to additionally compensate the Claimants for the difference between the rate of pay they are now receiving and mechanic's rate of pay, 60 days from January 29, 1957, and henceforth until this deficiency is corrected.

EMPLOYEES' STATEMENT OF FACTS: As of the date of this dispute, R. C. Garcia, D. Carreon, E. S. Romero, A. M. Garza, A. P. Montes, Henry Amparan, Jr., Raul Arreola, Trini Aguilar and Ramon Camarillo, hereinafter referred to as the claimants, held seniority as carmen apprentices at El Paso, Texas, on the Southern Pacific Company (Pacific Lines) hereinafter referred to as the carrier.

Under the well-known and recognized principle of apprentice training it is further obvious that the New York Agreement was not intended to force new inexperienced apprentices not familiar with mechanics' work or the use of tools required in connection therewith to nevertheless be upgraded to perform mechanics' work with the hazard of injury as referred to above and possible excessive damage to equipment.

In instances such as this, where a rule does not lend itself to a practical application in its literal form, said rule must be applied in a reasonable manner consistent with its intent and that is the manner in which Article III of the New York Agreement has been applied on this property with the full knowledge and concurrence of petitioner's representatives.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and if not dismissed, requests that it 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.

This submission proceeds on the claims of Carreon, Arreola, Guillen and Aguilar.

Garcia and Montes were upgraded before their claims were asserted and though later downgraded no issue is made of this action.

Article III, Page 145 of the controlling agreement would, if properly invoked, have entitled these five claimants, as carmen apprentices to be advanced to carmen.

1 Rule 38(b) and Article V, Carrier's Proposal No. 7(a), require claimants' committee to present its grievance within 60 days after its occurrence. Carrier invokes this rule.

2 The organization says that the violations of which they complain are continuing and that Section (f) of Rule 38 exempts it from the application of 38(b).

3 We find that the grievances occurred intermittently and therefore continuing, as claimed, but the last one set out and relied upon is May 3, 1956, more than 60 days prior to January 27, 1957, the date when the claims were presented to the carrier.

AWARD

Claims denied per last paragraph of findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1959.