

**Award No. 3261**

**Docket No. 3059**

**2-St.L-SF-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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**ST. LOUIS - SAN FRANCISCO RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1—That subsequent to February 7, 1957 the Carrier has been using Carmen (Car Inspectors) to perform Carmen Helpers' (Car Oilers and Packers) work in its train yard at Springfield, Missouri, in violation of the current agreement.

2—That for and in consideration of the aforesaid violation, the Carrier be ordered to restore the work to Carmen Helpers.

**EMPLOYES' STATEMENT OF FACTS:** On February 5, 1957, the carrier posted Bulletin No. 57, submitted herewith and identified as Exhibit A, in its Kansas Avenue Train Yard at Springfield, Missouri, abolishing seven (7) car oilers and packers jobs effective February 7, 1957. On the same day it posted Bulletins Nos. 58, 59 and 60 advertising for bids three new car inspectors' jobs (bulletins submitted herewith and identified as Exhibits B, C and D). Upon assigning successful applicants to the new jobs, the duties of the car oilers and packers whose jobs has been abolished, were assigned to the car inspectors.

This dispute has been handled up to and including the highest officer designated by the carrier to whom such matters are subject to being appealed with the result that that officer has declined to make any satisfactory settlement.

The agreement effective January 1, 1945, as subsequently amended, is controlling.

**POSITION OF EMPLOYES:** It is submitted that under the provisions of Rule 117, reading in pertinent part:

Here the Board has before it a dispute which in all essential points is similar to the dispute decided by Award 1380 without the aid of a neutral referee and to the dispute which was settled by arbitration on another carrier.

The findings in Second Division Award 1949 with Referee J. Glenn Donaldson contained the following sentence:

"Awards 1243 and 1317 of this Division, decided without a referee, are persuasive.

Referee J. Glenn Donaldson sat with this Division in deciding the dispute covered by Award 2621. There he made the following comment concerning the previously quoted sentence in Award 1949:

"That, perhaps, was an understatement. We now say that we should accord greater weight to an award rendered by the Division sitting without a referee based upon similar set of facts and rules than one in which an outside neutral participates and holds the result."

Upon the merits and in consideration of the similar set of facts and rules involved, the carrier submits that this is a dispute to which the doctrine of stare decisis is applicable and by here affirming that doctrine, the best interests of this Board, labor and management, will be served. This dispute is so similar to the other two that it can only be viewed as another attempt to secure a reversal of former adjudications.

The dispute before this Division does not involve a monetary claim but in Part 2 of the employees' claim the organization requests this Division to order the carrier to restore the work to carman helpers.

This Division said in Award 2357:

"We have no authority to direct a Carrier as to how it shall conduct its operations. We only have authority to interpret and apply the agreements of these employees of which the Railroad Labor Act gives this Division jurisdiction."

Thus, the question before this Division is whether or not the carrier's action was in compliance with the working agreement rules. For the employees to maintain their position, the burden of proof rests upon them.

In conclusion, this carrier has from time to time abolished helper positions in various crafts and transferred the remaining work of the abolished positions to mechanics without complaint from the organization. Complaint is here made because 24 helper positions were abolished within a period of little less than two months. The normal and ordinary meaning of the agreement rules was not changed or modified by reason of the number of positions abolished.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

Rule 117 of the agreement. To the extent that the instant carmen helpers' work is being performed by other than carmen helpers on the Springfield, Missouri, Seniority Roster Rules 30 and 117 of the governing agreement are being violated.

**James B. Zink**

**R. W. Blake**

**Charles E. Goodlin**

**T. E. Losey**

**Edward W. Wiesner**