

Award No. 3431

Docket No. 3209

2-C&EI-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement when they:

(a) Improperly assigned carmen helpers to perform carmen's work.

(b) Refused to discontinue this practice in violation of Rule 98 of the current working agreement.

2. That accordingly, the carrier be ordered to discontinue at once the practice of assigning carmen helpers to perform carmen's work.

EMPLOYES' STATEMENT OF FACTS: The Chicago and Eastern Illinois Railroad Co., hereinafter referred to as the carrier maintains and operates at Evansville, Indiana, a freight car shop known as Wansford repair track, whereat it employs both carmen and carmen helpers. In repairing freight cars at Wansford repair track the carrier assigns carmen helpers the work of inspecting journal bearings, wedges and boxes, which the carmen contend is carmen's work under the terms of the controlling agreement.

On July 13, 1957, the local committee of the carmen at Evansville, filed a claim with the carrier asking that the work of inspecting journal bearings, wedges and boxes be assigned to carmen in accordance with the provisions of Rule 98 of the controlling agreement.

On August 2, 1957, the carrier declined the local committee's claim alleging that it had always been the practice at Wansford repair track for

of similar duties or other work of the carmen's craft. It is further pertinent that while the instant dispute involves only Wansford, the same practice prevails at other points on the railroad.

The record discloses that for a period of many years carmen helpers have without protest from the organization performed the duty which is herein made a subject of dispute. It is the carrier's position that this function has, therefore, been recognized by the parties as "work generally recognized as carmen helpers work." The agreement rules do not justify a decision reversing this long established practice and interpretation of the agreement. The claim is therefore 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 employee or employees involved in this dispute are respectively carrier and employee 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.

The fact that for a period of years carmen helpers have without protest from the Organization performed the duties which are herein the subject of dispute does not estop them from now enforcing their agreement.

As in Awards 1898 and 2210 we find that —

"Consent and practice cannot be considered as an agreed interpretation of the rule, since the rule is too plain to require or permit such interpretation. * * *."

and Rule 98 clearly defines the work involved as carmen's work in the instant case.

The evidence in this record does not disclose a mutual agreement or interpretation which would permit us to say that the Agreement was not violated. An affirmative award is required.

AWARD

Claim (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1960.