

Award No. 3495
Docket No. 3206
2-L&N-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A.F.L.—C.I.O. (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the terms of the current agreement carmen helpers were unjustly removed from service and supplanted by carmen on May 20, 1957, Montgomery, Alabama.

2—That accordingly the Carrier be ordered to restore carmen helpers to the positions of oiling cars and compensate them for 8 hours each day carmen perform oiling duties subsequent to the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: Effective May 20, 1957 all carmen helpers, including car oilers, were furloughed at carrier's Montgomery, Alabama Shops and Yards, and the duties previously performed by carmen helpers were arbitrarily assigned to carmen.

Subsequent to the aforementioned date (May 20, 1957), all carmen helpers' duties, including the oiling, packing, as well as brassing of cars at Montgomery, Alabama have been performed by carmen.

This dispute has been handled with the carrier up to and including the highest officer designated by the company to handle such disputes with the result desired not obtained.

The agreement effective September 1, 1943 as amended, is controlling.

POSITION OF EMPLOYES: It is submitted that under the terms of Rule 106, reading, in part—

“Employees regularly assigned to * * * (duties of) car oilers and packers, * * * , rebrassing of cars in connection with oilers' duties, cleaning journals, * * * , and all other work generally recognized as carmen helpers' work, shall be classed as helpers.”

the work of car oilers or packers, as well as cleaning journals, are the duties of carmen helpers.

backing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, rebrassing of cars in connection with oilers duties, cleaning journals, repairing steam and air hose, assisting carmen in erecting scaffolds and all other work generally recognized as carmen's helpers' work, shall be classed as helpers."

In its interpretation of P&LE Rule 28 (which is practically identical to L&N Rule 106), it was the findings of the Second Division, National Railroad Adjustment Board, that the P&LE Railroad Company and The Lake Erie Eastern Railroad Company had not violated the agreement in assigning the work of "oiling and packing" to carmen.

Carrier asserts that employes have recognized the established practice in effect on its property — at certain locations — for many years of having carmen perform the work of car oiling and other helpers' duties; and thus, by their acquiescence without protest, acknowledge that mechanics may perform any of the duties assigned to helpers. In these circumstances, there is no merit to the claim and it should, therefore, be denied.

The situation involved here is the same as that before the Division covered by Docket No. 3060 L&N-CM.

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.

The parties to said dispute were given due notice of hearing thereon.

In Award 3263, rendered on June 23, 1959, we decided the same question arising under the same agreement between the subject parties. The prior decision concerned identical action which the carrier took at a different location. The interpretation that is to be placed upon the agreement cannot be permitted to vary from one point to another on the property. Such a result would lead to utter confusion.

Award 3263 governs in the instant case. A denial award is in order.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1960.

DISSENT OF LABOR MEMBERS TO AWARDS 3495 to 3507, inclusive

We agree that Award 3263 arose under the instant agreement between the same parties as here involved, however, as pointed out in the dissent to Award 3263 the awards there followed did not involve the governing agreement and therefore were not in point. The Arbitration Case cited (The Pennsylvania Railroad Company vs. United Railroad Workers Division, Transport Workers Union of America, AFL-CIO) was determined by the author of the instant award and, while it may be flattering to the author to have it cited, it likewise had no bearing on the dispute involved in Award 3263.

Rule 26(a) of the controlling agreement prescribes that "When it becomes necessary to reduce expenses, the force at any point or in any department shall be reduced, seniority as per Rule 29 to govern * * * " If the carrier desired to make a change in this agreement rule it should have served notice showing the proposed change and handled same in accordance with the requirements of the Railway Labor Act, but the carrier did not observe the right of the representatives of the whole unit to be notified and dealt with concerning a matter which not only destroys rights of the instant claimants but may provide a leverage for taking away other advantages of the collective agreement. (Order of Railroad Telegraphers v. Railway Express Agency, 64 Sup. Court Rep. 582).

We realize that it takes very little time and no effort to simply state that a previous award governs, however the purpose of calling in a neutral is to have each case decided on its merits under the governing agreement. An award of this Board that ignores the collective bargaining agreement between the parties to any dispute is not valid regardless of the number of previous awards cited. The agreement requires that the claimants be made whole. To not do so makes a mockery of the collective bargaining processes under the Railway Labor Act.

/s/ Edward W. Wiesner
Edward W. Wiesner

/s/ R. W. Blake
R. W. Blake

/s/ Charles E. Goodlin
Charles E. Goodlin

/s/ T. E. Losey
T. E. Losey

/s/ James B. Zink
James B. Zink