

Award No. 3496

Docket No. 3233

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 agreement the rights of helpers to perform helpers' work were unjustly destroyed and they supplanted by carmen on May 3, 1958 at Chattanooga, Tenn., and subsequent thereto in the performance of such work.

2—That accordingly, the carrier be ordered to restore carmen helpers to the positions and compensate those furloughed for 8 hours each day carmen perform oiler and other helpers' duties subsequent to the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: On April 29, 1958 the carrier at their Chattanooga, Tennessee Shops, posted Bulletin SC 504 on the bulletin boards, furloughing 18 carmen helpers. This bulletin is submitted herewith and identified as Exhibit A.

Subsequent to the tour of duty of those listed on the aforementioned bulletin (employees' Exhibit A) on May 3, 1958, carmen have been assigned to perform all duties previously performed by carmen helpers.

This dispute has been handled with the carrier up to and including the highest officer designated by the company to handle such disputes, without the desired results being 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) * * * washing and scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint on other than passenger cars preparatory to painting, car oilers and packers, supply and tool room attendants (car department), operators of bolt threaders, nut tappers, drill presses and punch and shear operators (cutting only bar stock and scrap), holding on rivets, striking chisel bars and side sets, using backing ham-

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 dispute involved in this case is similar to that in Docket 3060 L&N-CM now before this Division.

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 waived right of appearance at hearing thereon.

In Award 3263 we decided the same question under the same agreement between the subject parties. Having carefully reviewed the argument and evidence submitted in the present case, we are constrained to hold that no basis is afforded for departure from said prior decision. Since Award 3263 is deemed to govern the instant dispute, the claim will be denied.

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**