

Award No. 3508
Docket No. 3210
2-A&WP-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 126, RAILWAY EMPLOYEES'
DEPARTMENT, A.F. of L.—C.I.O. (Carmen)**

**ATLANTA AND WEST POINT RAILROAD
THE WESTERN RAILWAY OF ALABAMA**

DISPUTE: CLAIM OF EMPLOYEES: 1 — That under the current agreement carmen helpers were unjustly treated when on July 29, 1957 some were supplanted by carmen

2 — That accordingly the Carrier be ordered to restore carmen helpers to a third shift assignment of oiling cars in train yard, Montgomery, Alabama and compensate carmen helpers for 8 hours each shift worked by carmen helpers for 8 hours each shift worked by carmen on their assigned duties subsequent to July 29, 1957.

EMPLOYEES' STATEMENT OF FACTS: Under date of July 23, 1957 the carrier placed Bulletin No. 4064 on bulletin boards abolishing and reassigning several positions, including the work in dispute here.

As a result of Bulletin 4064, carman helper (oiler) Tommie Williamson, with a work week assignment of Wednesday through Sunday, 11:00 P. M. to 7:00 A. M., was removed from carmen helpers duties of oiling train yard cars and relief oiler, Edward Jackson was deprived of his service rights to work as carman helper (oiler) on the third shift, 11:00 P. M. to 7:00 A. M., Mondays and Tuesdays.

Subsequent to July 29, 1957 the work of oiling cars in Montgomery Train Yards, which was formerly performed by the aforementioned carmen helpers, has been assigned to Carmen W. W. Maddox, Marvin Maddox and H. O. Taylor. The abolishment of the seven day carmen helpers positions is identified in Items 6 and 7 of employees' Exhibit A.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company with whom such disputes should be handled, with the result that he has declined to adjust it.

The agreement effective August 15, 1944 as subsequently amended, is controlling.

pers, drill presses and punch and shear operators (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, and 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."

Our Rule 98 is identical with the P&LE Rule 28 interpreted in Award No. 1380. In Award 1380 the contention of carrier was that its action in assigning the work of packing and oiling to carmen was not a violation of the agreement. This Division sustained carrier's contention.

There is no merit to this claim. For reasons outlined above, carrier requests claim 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.

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

The petitioner protests carrier's action in abolishing the positions of certain carmen helpers at Montgomery, Alabama and transferring to carmen the oiling work which these helpers had been performing. It is asserted that Rule 98 of the subject agreement reserves to carmen helpers the oiling of cars in the Montgomery Train Yard. Petitioner denies that Rule 96, carmen's "Classification of Work" rule, includes the oiling activity in question.

Both of the above provisions are so-called standard rules which appear in identical or similar language in numerous agreements in the railroad industry. In Award 1380, rendered by the Board in 1950 without the assistance of a referee, the same contract language that is found in the confronting rules was interpreted to mean that the carrier there involved was not barred from assigning to carmen the work that previously had been performed by helpers known as yard car oilers. The Board has subsequently issued several awards to like effect. We find nothing in the present case to justify placing a different interpretation upon the language of the controlling agreement.

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.

LABOR MEMBERS DISSENT TO AWARD 3508

Seemingly the majority's only reason for following Award 1380 is to support the carrier's attempt to justify its position on the basis of that award. The facts on which Award 1380 is based are not the same as those in the instant case. The carrier involved in Award 1380 was upheld due to the fact that no carmen helpers were employed at the point involved and therefore no seniority rights were violated. However, in the instant case carmen helpers were employed and the carrier had no right to supplant them with carmen.

Furthermore we do not consider it feasible to base an award on another award but, if the majority considered it necessary to do so, it would have at least been somewhat more appropriate to follow one involving similar conditions — for example Award 804 (likewise rendered by the Board without the assistance of a referee), wherein it was properly held that carmen helpers (oilers) should be used instead of carmen. The primary desire of the author of the instant findings and award seems to have been to support the carrier, otherwise Award 2567, rendered seven years subsequent to Award 1380 on the same railroad, would not have been ignored. The findings in Award 2567 rightfully hold that “. . . an organization is entitled to be protected against a gradual taking away of its contractual rights.” Not only is the instant award a taking away of the organization's contractual rights but a violation of the rights of the carmen helpers acquired pursuant to the collective agreement.

Instead of casually basing findings and awards on previous irrelevant awards the controlling collective agreement should be studiously followed.

/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