Award No. 3510
Docket No. 3245
2-B&OCT-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. 130 RAILWAY EMPLOYES' DEPARTMENT, A.F. of L.—C.I.O. (Carmen)

THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Baltimore and Ohio Chicago Terminal Railroad Company, is and persists in continuing to violate Rule 77 of the current working agreement by assigning car inspectors to perform carmen helpers work.

2. That accordingly, the following carmen helpers be paid time and one half for work performed by car inspectors.

May 23, 1957, — N. Butts, J. Statler, W. Paulowski — 8 hours each.
May 25, 1957, — W. Ehlers — 8 hours.
May 27, 1957, — S. R. Bailey — 8 hours.
May 28, 1957, — E. Wozniak — 8 hours.
June 12, 1957, — W. Paulowski — 8 hours.

EMPLOYES' STATEMENT OF FACTS: The Baltimore and Ohio Chicago Terminal Railroad, hereinafter called the carrier, maintains at Chicago, Illinois, a seniority roster subdivision exclusively of carmen helpers. The carmen helpers named in Part 2 of the employes' claim who are hereinafter referred to as the claimants are regularly employed as carmen helpers by the carrier at Chicago, Illinois where they hold seniority as such.

The carrier on May 23, 25, 27 and 28, 1957 and June 12, 1957 elected to either stand by or authorize car inspectors to pack and oil journal boxes which is, and always has been, considered carmen helpers work on this carrier.

This dispute has been handled with all carrier officers designated to handle such disputes including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1926 as subsequently amended between the Baltimore and Ohio Chicago Terminal Railroad Company and the Brotherhood of Railway Carmen of America represented by System Federation No. 130, Railway Employes' Department, AFL, is controlling.

car inspector does not negate the mechanic-helper relationship. The oiler is assisting the car inspector in performing the overall task of inspecting cars and handling the necessary light repair work. The fact that the term 'oiler' has come into common use on the property, and that oiler positions are bulletined and awarded as such, cannot be held to mean that the contractual status of the assignment of oiling work has been changed. The manner in which overtime oiling work is assigned in accordance with local overtime agreements is not germane to the present issue. Nor is the prescribed method for temporarily filling existing oiler positions pertinent to this controversy.

We find that the contract contains no general bar against car inspectors doing the oiling and related work here in dispute. In view of this determination, we are unable to conclude that because oiler positions have existed at particular locations, oilers have thereby acquired exclusive jurisdiction over the oiling work there performed. The Company has the right to abolish positions. The car inspectors who took over the disputed work are still performing work within the carmen's craft. We conclude, therefore, that Management has not violated the agreement as charged by the Union."

The "AWARD" in this case was:

"It is not a violation of the existing agreement between the parties dated July 1, 1949, as amended, for the Company to abolish oiler positions and require car inspectors to oil and pack boxes, renew journal hearings, wedges and journal box lids previously performed by the abolished positions."

CARRIER'S SUMMARY: It is the position of the carrier in this case that:

1. There has been no violation of Rule 77 of the special rules of the shop crafts' agreement.

2. The work protested here was properly performed by car inspectors.

3. Part 1 of the claim as made is totally invalid since there has been no violation of Rule 77 or any other rule of the current working agreement.

4. Since there has been no agreement violation the wage claim made at Part 2 of this claim for carmen helpers be paid time and one-half for work performed by car inspectors is wholly without merit.

5. The claim as made is basically defective because claim is asserted at time and one-half for work performed by car inspectors. This Division, as well as all other Divisions of the National Railroad Adjustment Board has ruled that claim made for work not performed can only be at the straight time or pro rata rate.

6. There is no proper basis for the claim made by carmen helpers to the work performed here by mechanics of that craft.

The carrier respectfully requests that this claim be denied in its entirety.

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.

Parties to said dispute were given due notice of hearing thereon.

At the time in question carmen helpers at Carrier's Barr Yard, Chicago, were regularly assigned the duties of packing and oiling journal boxes on freight cars. On the dates specified in the claim the Carrier required car inspectors (carmen) to perform such work during their regular tour of duty. The reason for this assignment was that particular carmen helpers were laying off on the dates involved. Contention is made that agreement Rule 77 (entitled Carmen Helpers) was violated because car inspectors were used to perform work belonging to carmen helpers.

Careful examination of the subject agreement reveals no provision which bars the use of carmen to perform work which also may be assigned to carmen helpers. In previous cases involving similar agreement language we have denied claims arising out of situations in which carmen helper positions were abolished and the work that had been performed by the incumbents of such positions was assigned to carmen. Here, however, the work complained of was performed by carmen because particular carmen helpers failed (or were unable) to report for duty. No one lost any work regularly assigned him solely by virtue of the Carrier's action.

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 AWARD 3510

The statement that "the subject agreement reveals no provision which bars the use of carmen to perform work which also may be assigned to carmen helpers" shows lack of understanding of the agreement provisions. There is but one classification of work rule for carmen helpers, Rule 77, and, since it is entitled Carmen Helpers, it should be readily apparent that the work specified belongs to helpers on the carmen helpers' roster. Seniority is basic in the assignment of work and certainly those employes holding seniority have prior rights to the performance of the work in their seniority classification. The assignment of carmen to perform the instant carmen helpers' work constitutes a violation of the subject agreement and the claimants, carmen helpers holding seniority rights to the work involved, are entitled to compensation for time lost as specified in the claim.

/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