Award No. 3511
Docket No. 3349
2-SOU-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. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the Carrier improperly furloughed Carmen Helpers Marvin Daniel, Avery Shields, Crafford Moon, Toy Howard, Ralph Banks, Sylvester Mitchell, Johnnie Peeks and Joe Gresham, Atlanta, Georgia, and assigned Carmen Mechanics to perform the Carmen Helpers' work.

2. That accordingly the Carrier be ordered to recall the above named Carmen Helpers to service and assign them to perform the work classified as Carmen Helpers' work in the effective shop Craft agreement.

EMPLOYE'S STATEMENT OF FACTS: Carmen Helpers Marvin Daniel, Avery Shields, Crafford Moon, Toy Howard, Ralph Banks, Sylvester Mitchell, Johnnie Peeks and Joe Gresham, hereinafter referred to as the claimants, were, until on or about August 12, 1957, employed by the Southern Railway System, hereinafter referred to as the carrier, at Atlanta, Georgia.

On or about August 12, 1957, the carrier furloughed the claimants and assigned carmen mechanics to perform the work which had previously been performed by the claimants.

This dispute has been handled in accordance with the current agreement up to and including the highest carrier officer to whom such matters may be appealed, with the result he has declined to comply with our request.

The agreement effective March 1, 1926 as subsequently amends is controlling.

POSITION OF EMPLOYES: It is submitted that within the meaning of Rule 151, reading:

"151. Carmen Helpers:

the need for helpers all but ceased to exist. Thus, throughout all the years that forces have been reduced and adjusted due to the change over from steam to diesel electric motive power, the practice has been to cut off helpers and create additional positions of mechanics. This has been the recognized and established practice under the agreement in evidence throughout the years that it has been in effect. Thus, the Brotherhood has long since conceded the point here at issue. It has conceded that where, as here, there are, because of the type of operation, a combination of duties to be performed that a mechanic of the craft be employed to perform all recognized mechanics' work and work which might otherwise be performed by a helper. The Brotherhood cannot, therefore, now be heard to complain. It has long since conceded the issue.

CONCLUSION

Carrier has shown that:

(a) The claimants were not improperly furloughed as alleged.

(b) Under the agreement and practices thereunder, it was entirely proper for car inspectors and repairers (mechanics) to perform a combination of duties, including work which might otherwise be performed by helpers if employed.

(c) The management and Brotherhood representatives agreed in 1957, in accordance with Rule 172 (d) of the agreement in evidence, that none of the claimants were qualified to perform the duties of car inspector and repairer.

(d) The carmen's Brotherhood, as well as the other shop craft organizations, have long since conceded that, under the agreement in evidence, mechanics be assigned to perform work where a combination of duties are required to be performed and do work which might otherwise be performed by helpers if employed. The Brotherhood has, therefore, long since conceded the point here at issue.

(e) Part 2 of the claim, demands something which the Board is without authority to grant. There is, therefore, ample justification for dismissal of part 2 for want of jurisdiction.

Part 2 of the claim should be dismissed by the Board for want of jurisdiction. The remainder of the claim should be denied, as it is without any basis under the agreement in evidence and practices thereunder.

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.

In 1957 the Carrier installed a new car retarder yard at Atlanta, Ga. which resulted in a change in the method of inspecting and maintaining cars. Under the new procedure the oiling of journal boxes is performed by an automatic or

mechanical device controlled by the pushing of a button by a pit inspector (carman). The packing of journal boxes is performed by car inspectors (carmen) in connection with other duties assigned to them.

Prior to the installation of this new yard the oiling and packing of journal boxes at Atlanta had been done by car oilers and packers (carmen helpers). The adoption of the new procedure resulted in the abolishment of thirty-six carman helper positions and the creation of a lesser number of additional carman positions. The subject claimants were furloughed in connection with this development. Contention is made that the Carrier violated the agreement rights of the claimants by transferring their work to carmen.

The work of inspecting and maintaining cars is included in Rule 149, which sets forth the "classification of work" of carmen. The duties which are the subject of this controversy are covered by this rule. Carmen helpers may be used to perform the type of work referred to in Rule 151 but they do not have exclusive jurisdiction over this work as against carmen. The Carrier therefore did not violate the agreement by assigning the involved work to carmen and abolishing the positions of the claimant carman helpers.

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 3511

Rule 151 is not a permissive rule implying that carmen helpers may do the work of car oiling and packing, but clearly sets forth that such work is carmen helpers' work. The agreement containing this rule constitutes the sole agreement between the carrier and the employes affected. The majority admits that prior to the furloughing of the subject carmen helper claimants and the creation of additional carmen positions car oiling and packing at Atlanta, Georgia, was performed by carmen helpers, but contends that such action on the part of the carrier did not violate the agreement. That such action is a violation of the agreement is apparent from the fact that this case is not one where the carrier abolished positions the work of which no longer needed to be performed, but is one wherein work still existent and contractually belonging to carmen helpers was assigned to carmen without any negotiations between the respective representatives and the carrier, or any manner as provided by the Railway Labor Act.

The majority's statement that "Carmen helpers may be used to perform the type of work referred to in Rule 151" leads one to conclude that the agreement was not read for the purpose of applying the rules as written but with a view in mind of rendering an award inconsistent with the agreement; thus providing, in the words of the Supreme Court, "a leverage for taking away other advantages of the collective contract." Order of Railroad Telegraphers v. Railway Express Agency, 64 Sup. Court Rep. 582.

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