

Award No. 3751
Docket No. 3751
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, A. F. of L. - C. I. O.**

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: This is to notify you that your decision as to the settlement of the cases that had been held in abeyance at the Master Mechanic-Car, Mr. Bjork's level is not satisfactory to the organization and in due time these cases will be processed to the Second Division, National Railroad Adjustment Board. This is in reference to original Case M-149. Claims that are being referred to are as follows:

1. On June 19, 1957, A. Reiss was taken off his job on the Bending Press. He was then replaced by a carman instead of a helper. Rule 26 was violated. For this season the organization is asking that Helper Cencic be compensated eight (8) hours for this day.

2. On June 19, 20, 21, 1957, O. Szalcetti and A. Hines, Car Repairmen delivered stringers to cars being worked in Lot Number 441. This work has always been done by helpers. Since carmen did this work the organization is asking for eight (8) hours pay for each day for Helpers F. West and R. Bobchak.

3. On July 9, 1957, W. Moore, Cabinet Maker was used to do helpers work in the planing mill. Organization asking eight (8) hours pay for C. Cencic, Helper.

4. On July 11, 1957, H. Bussard, Carman, was used as a helper on Beam Punch. Organization asking eight (8) hours pay for F. West, Helper.

EMPLOYEES' STATEMENT OF FACTS: Original case known as Case M-149 was handled on the property of the carrier at McKees Rocks, Pa. It was then processed to the Second Division, National Railroad Adjustment Board. The claims that are now being processed to the Board were held in abeyance pending settlement of original case.

There was no evidence submitted by the employees in support of their claim that the work involved is that of laborers. However, the Carrier has shown that at the Pittsburgh Station the work involved in this claim is performed by coach cleaners who come under the controlling agreement under which these claimants work.

From the evidence submitted, this Board can find no violation of the effective agreement. Therefore, this claim must be denied.

AWARD

Claim denied."

(Rule 27, referred to above, is identical with current Rule 25 of the carmen's agreement.)

CONCLUSION:

Carrier has shown that the issue which has been brought before the Board in these claims has already been adjudicated by this Division in Award No. 3211, involving the same parties here involved, and that the findings of this Division have been properly applied by the carrier in handling each of the claims here involved.

The carrier has also shown that the work complained of by the employees in these claims has never been performed exclusively by, nor ever been considered as belonging exclusively to carmen helpers.

Awards of the Second Division, National Railroad Adjustment Board, have been cited in support of carrier's position.

Carrier respectfully submits that these claims are entirely without merit and should 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Original Case known as M-149 was handled on the property of the Carrier at McKees Rocks, Pennsylvania. It was then processed to the Second Division, National Railroad Adjustment Board. The claims that are now being processed to the Board were held in abeyance pending settlement of original case.

A decision was rendered by the Second Division in Docket No. 3036, Award No. 3211, but the organization could not agree with the carrier as to the meaning of the language of the award, covering the cases involved in this submission.

The organization is now returning with the present case to the Second Division for decision covering the four claims in dispute.

In all but one of the individual claims included in this case, the claim is based on a single incident; all of the work performed by the carmen, listed in the four claims, was performed on the particular assignment on which they were working. Carrier contends, and it is not denied, that a sufficient force of helpers was working on the dates involved, and anyone of whom could have been used to perform the work complained of had the carrier deemed it necessary to assign this work to a helper.

In Award No. 3211, Referee Ferguson, this Division said, we quote:

"In this docket the union claims that Rule 26 was violated. The rule is a classification of work rule which enumerates some of the duties of a helper and concludes with the catch-all phrase, 'and all other work generally recognized as carmen's helpers' work, shall be classed as helpers.'

"This rule does not contain any language establishing that such work shall belong only to helpers. It is descriptive, not exclusive.

"It follows that a helper should be used wherever and whenever helping is required. This does not mean that a higher rated mechanic cannot help himself in a simple situation or that in every instance a helper should stand by to provide help if the need arises."

In Award No. 3617 — Speaking through Referee Stone this Division said:

"The Carmen classification and Carmen Helpers' classification plainly were not intended to be mutually exclusive. As the name implies the purpose of the latter class is to help the former class within its field of work. Thereby certain of the unskilled duties connected with carmen's work may be assigned to lower paid employees when the amount of such work justifies the assignment.

"These Helpers have seniority rights among themselves but even where they are regularly assigned we find no rule or reason to prevent the use of carmen for tasks usually performed by them, or for a tour of duty, when a Helper is not available and the carmen's rate is paid."

We believe that the above cited awards, control the case before us. There was no violation of the agreement and the claims must be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1961

DISSENT OF LABOR MEMBERS TO AWARD 3751

The majority's findings that there was no violation of the agreement is in direct conflict with Rule 26, Classification of Work Rule, and Rule 39, Seniority Rule of the controlling Agreement.

This Board cannot make or amend agreements. It is bound by the agreement between the parties and in this instance a violation of the existing agreement is clearly shown.

/s/ James B. Zink

/s/ R. W. Blake

/s/ T. E. Losey

/s/ Edward W. Wiesner

/s/ Charles E. Goodlin