

Award No. 3835
Docket No. 3782
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Doyle when the award was rendered.

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA,
A. F. of L.-C. I. O. (Railroad Division)**

**PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: On Sept. 23, 24, 25, 26, 1958 Diesel Engine No. 8746 was cleaned and painted. On Sept. 30, Oct. 1, 2, 3, 1958 Diesel Engine No. 8954 was cleaned and painted. The cleaning and masking work on these engines belongs to helper. Painters were used to do the work. For the reason that painters were used instead of helpers to do the cleaning and masking the organization requests that J. Ferko, helper, who was available for this work be compensated eight (8) hours at the pro-rata rate of pay for the above mentioned days.

EMPLOYES' STATEMENT OF FACTS: This case was handled on the property of the carrier and is known as Case ML-36.

On the dates mentioned above the painters did perform work that is considered as helpers work and has always been performed by helpers.

The only reason that the carrier used painters to perform the work of painter helpers is, the helpers are furloughed and the carrier would not recall the painter helpers to perform the work that belongs to them.

There is more work in cleaning and masking of diesel engines than there is in painting them, by this we mean it takes more time to clean and mask the engines than to paint them and this the carrier did not deny when the case was heard by the carrier.

That the time spent by the two painters in masking and cleaning the engines would have given the helper eight (8) hours employment on each of the above mentioned days.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie

Carrier, in Principal Point No. 1, has stated that it does not concede that cleaning and masking of locomotives to be the exclusive work of painter helpers. Carrier would reiterate this statement, and does not intend that the citation of Award 1380 alters this position, but does contend that it supports carrier's position that the work complained of is not exclusively carmen helpers' work.

Carrier also would refer to that language contained in the findings in Award 2623 of this Division, reading as follows:

" * * * We cannot find reflected in Rule 104 any intent to give Crane operators the exclusive right to operate cranes. * * * What is lacking here to support claimants' position is a classification of work rule. We cannot imply one from the facts presented. We do not find a violation of the Agreement."

Attention of the Board is also directed to Awards 2959, 3261, 3262 and 3263 of the Second Division, as supporting carrier's position that it has the right to assign the work of carmen helpers to carmen.

CONCLUSION

It has been shown that no violation of the agreement occurred due to locomotive painters performing cleaning and masking of diesel locomotives during the process of painting.

Carrier has also shown that the employment of painter helpers is not justified to perform cleaning and masking work.

The Second Division, National Railroad Adjustment Board, in awards as shown above has supported the position taken by the carrier in this dispute.

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.

We must here determine the meaning of Rules 25 and 26 of the agreement as applied to the issue whether the work of cleaning and masking of a locomotive preparatory to painting is the exclusive province of the carman or of the helper.

Rule 25 classifies the work of the carman. It describes at length the various duties of the carman and to the extent here pertinent provides:

" * * * painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils, removing paint and use of sand blast machines, and all other work generally recognized as painters work under the supervision of the locomotive and car departments * * * ."

In classifying the duties of the helper as it bears on the subject in issue Rule 26 contains the following:

“ * * * employes engaged in scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint or other than passenger cars preparatory to painting * * * and all other work generally recognized as carmen's helpers work shall be classified as helpers.”

Clearly the work of cleaning and masking of a locomotive immediately preparatory to painting is to be placed in one or the other classifications and hence the inquiry is not limited to whether it comes within Rule 26 but rather which of the two rules governs.

Traditionally this preparatory work has been performed by helpers and the instant conflict results from force cutbacks which have furloughed helpers and have reduced the force to two painters.

The carrier concedes that the work may be done by the helper “where sufficient volume exists to justify their full time employment” but argues that the same work may also be performed by carmen as part of their full time assignment.

A question similar to the instant one was decided adversely to the employes in Award 3211 wherein it was held that Rule 26 does not contain any language establishing that such work shall belong only to the helpers—that it is descriptive, not exclusive. This same viewpoint was announced in Award No. 3617. There the Board per Referee Stone held that: “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.”

The principles applied in the cited awards are fully applicable here and require a holding that the work which is in issue is not the exclusive property of the helpers and can be performed by carmen. It follows that the claim must 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 20th day of September, 1961.