

Award No. 3934

Docket No. 3695

2-AJT-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 110, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

ATLANTA JOINT TERMINALS

DISPUTE: CLAIM OF EMPLOYEES:

1 — That the Carrier violated the current agreement when on December 24, 1958, it abolished the jobs held by Carmen Helpers L. B. Prince, T. Baskin, H. Williams, W. H. Black, K. Todd, P. Horton and A. F. Bostwick and assigned the work they had been performing to carmen mechanics.

2 — That accordingly, the Carrier be ordered to restore these claimants to the positions held by them on December 24, 1958, and compensate them for all time lost as the result of said violation.

EMPLOYEES' STATEMENT OF FACTS: On December 17, 1958, the carrier posted Bulletin No. 1544 abolishing positions held by Carmen Helpers L. B. Prince, T. Baskin, H. Williams, W. H. Black, K. Todd, P. Horton and A. F. Bostwick, hereinafter referred to as the claimants, effective at the close of business December 24, 1958, which caused them to be furloughed.

On December 17, 1958, the carrier posted Bulletin No. 1543 assigning the work which had been performed by these claimants to carmen mechanics.

This dispute has been handled up to and including the highest officer designated by the carrier who has declined to make any satisfactory adjustment.

The agreement effective August 15, 1954, as subsequently amended, is controlling.

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.

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

The facts and applicable rules here are not essentially different from those in Award 1380, rendered by this Division without a referee, and in Awards 3261, 3263, 3495, 3508, 3509, 3510, 3511, 3603 and 3644, and therefore necessitate a denial award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1962.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3934

The findings purport to base themselves upon an asserted knowledge that "The facts and applicable rules here are not essentially different from those in Award 1380, rendered by this Division without a referee . . ." This is surprising since the facts are patently not analogous. In the case on which Award 1380 was rendered no carmen helpers were displaced and consequently the seniority principle was not violated. In the case at hand Employees' Exhibits "A" and "B", Carrier's Bulletins 1544 and 1543, disclose that a unilateral change was made to the detriment of the carmen helpers, that is, all helpers' positions were abolished and the work assigned to carmen and mingled with car inspectors' duties. There is a tremendous distinction between a case involving seniority and one where seniority is not involved.

The record in the present case speaks for itself. A fair appraisal of the facts established conclusively a studied disregard of Rules 18 and 21. Under Rule 18 (a) "When it becomes necessary to reduce expenses, the force at any point or in any department shall be reduced, SENIORITY AS PER RULE 21 TO GOVERN . . ." (emphasis ours) Rule 21 (a) prescribes that "Seniority of employes in each craft covered by this agreement shall be confined to the point employed in each of the following Departments, WITH SEPARATE ROSTER FOR MECHANIC AND HELPER . . ." (again emphasis

ours) All of this was brought to the attention of the referee. The findings of the majority are shaped to fit a conclusion based upon awards which are said to justify a denial. Rules are either violated or they are complied with; in this case the rules were violated. The only way to effectuate compliance with the agreements is to sustain claims where rules are violated.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink