

Award No. 4024
Docket No. 3837
2-McCloud-MA-'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:

RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O.
INTERNATIONAL ASSOCIATION OF MACHINISTS

McCLOUD RIVER RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 — That the Carrier violated and continues to violate Rules of the agreement between the McCloud River Railroad Company and The International Association of Machinists, effective December 19, 1952, as subsequently amended, when it assigned Shop Laborers' work, and duties incidental thereto, consisting of sanding, refueling and servicing diesel locomotives, to an employe identified as Louis Gaunt, whose classification as Hostler was unilaterally changed by the Carrier to "Dispatcher Serviceman", not subject to any provisions or terms of the collective bargaining contract.

2 — That accordingly the Carrier be ordered to restore such Shop Laborers' work to the Scope and operation of the current agreement, and the Carrier be further ordered to additionally compensate Shop Laborers Pedro Martinez and Robert Jordan (hereinafter referred to as claimants), four (4) hours each, at the pro rata rate, on an alternate daily basis, retroactive to November 2, 1959 and continuous therewith until violation of the agreement is corrected.

EMPLOYES' STATEMENT OF FACTS: Employes classified as "Dispatcher Servicemen", assigned by the carrier to perform shop laborers' duties referred to hereinabove, hold no contractual rights under the controlling agreement, therefore, are not subject to any terms of said agreement.

Shop laborers are subject to and covered by specific provisions of the current agreement, have negotiated seniority and other service rights thereunder, including contractual right to perform work involved in this dispute.

and one-half on the actual minute basis with a minimum of one (1) hour at straight time rate for any such service performed.”

Such time would average one hour and fifteen minutes.

11. We respectfully request that claim be denied, or if not denied, that payment be on a basis of actual time necessary to perform work at payment of one and one-half rate.

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 waived right of appearance at hearing thereon.

The claim is that the Carrier violated the Agreement by assigning Shop Laborers' work to "Louis Gaunt, whose classification as Hostler was unilaterally changed by the Carrier to 'Dispatcher Serviceman', not subject to * * * the collective bargaining contract."

The original Agreement was effective December 19, 1952, and covered only the six crafts of Machinists, Boilermakers, Carmen, Blacksmiths, Stationary Engineers and Hostlers, each with separate seniority. Shop Laborers were not included until the Memorandum of Agreement effective September 21, 1959.

Hostlers' work was not defined in the Agreement, but originally consisted of firing steam locomotives, and sanding, fueling, watering and moving locomotives in and out of roundhouses and from track to track. Upon the change from steam to diesel power by 1956, the abandonment of the old shop and roundhouse, and the operating of not more than five locomotives, Louis Gaunt was the only remaining hostler and his services as such averaged only two hours per day. As of July, 1956, he was therefore assigned additional duties as a night dispatcher, which are not mentioned in the Agreement, and was given the title of serviceman-dispatcher, apparently to indicate his duties. He continued to perform the traditional hostler's work of sanding, fueling and watering the locomotives.

However, since the Memorandum of Agreement effective September 21, 1959, added Shop Laborers to the coverage of the Agreement and provided that their work should include that of "locomotive supplymen, * * * roundhousemen, fuel oil attendants, * * * and * * * oil pumpers work consisting of pumping oil from tank cars to storage tanks and into locomotives," the claim seems to be that Carrier violated the Agreement by permitting Gaunt to continue performing hostlers' work after that date, it having added dispatchers' duties and changed his job title in 1956.

For at least five reasons the claim cannot be sustained: First, the hostlers' work in question was not awarded them in 1956, or in 1959, but

had existed at least as early as 1952, long before the Shop Laborers came under the Agreement or had any interest in the work.

Secondly, the 1959 Memorandum of Agreement did not purport to take that work away from the hostlers' craft as of September 21, 1959, and transfer it to the Shop Laborers; it merely listed it among work which the latter could perform.

Thirdly, the 1959 Memorandum of Agreement expressly provided that:

“This rule shall not be construed to prevent employes of other classifications covered by this Agreement from performing certain duties referred to hereinabove, when necessary.”

Fourthly, although the Agreement does not cover dispatchers' work, it does not bar the Employes from performing it, and the Carrier should be commended rather than condemned for giving Gaunt that work so as to maintain his job; for under Rule 23 it could have abolished his hostler's job in 1956 and have had his work performed by a mechanic of another craft, although not by a shop laborer.

Fifthly, job designations are not classifications of employes, but of positions; consequently, the designation of Gaunt's position as serviceman-dispatcher cannot have destroyed his craft rating or his seniority as a hostler, or have taken him out from under the Agreement; Rule 22, which established that rating and that seniority, provides that seniority rosters shall be revised as of July 1st of each year and posted, that a list of additions, eliminations and corrections shall be posted as of January 1st of each year, and that errors found within 60 days shall be corrected; and Section 1 of the Agreement of November 1, 1956, provides that the Employes shall maintain their membership in the Organization. As Hostler's Committeeman Mr. Gaunt signed the original Agreement effective December 19, 1952, subsequent undated Memorandum of Agreement No. 1, and Memorandum of Agreement No. 2, and Memorandum of Understanding of April 13, 1953. Subsequent agreements were signed by General Chairmen and other representatives than Committeemen, but in the absence of any showing to the contrary we must presume that Gaunt's membership, craft status and seniority still continue; if not, assuredly this claim would have been quite different.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1962.