Award No. 4114
Docket No. 3870
2-C&NW-CM-'63

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. 12, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier on and subsequent to September 29, 1959 improperly assigned other than carmen helpers to perform carmen helpers' work at Clinton, Iowa, in violation of the current agreement.

2. That accordingly the Carrier be ordered to compensate the carmen helpers named below, including all others whose rights are violated in the amount of eight (8) hours each per day at the applicable carmen helpers' rate of pay for all time the aforesaid violation continues, retroactive to September 29, 1959:

Ralph Ven Huizen

Walter P. Huebner

John Bronkema

George Foster

Robert J. Fulton

Elmer J. Vogel

James W. Swaagman

Chelsea F. Beck

Ernest R. Burlingame

Charles E. Yeley

Norman V. Plunkett

Earl A. Lawton

Cedric O. Campbell

are discontinued the right of the Carrier to assign the work of Carmen Helpers to Carmen, as here, has been decided adversely to their claim by this Board in awards No. 1380, without Referee, Arbitration Award between the Pennsylvania Railroad Company and United Railroad Workers Division, Transport Workers Union of America, AFL-CIO Arbitration 219 (Case No. B 22) 3/1/57 and the later Docket No. 3087, this Division, Award No. 3262."

In Awards Nos. 3262 and 3263, carmen helpers' positions were abolished and work they formerly performed was thereafter performed by carmen. These claims were also denied by the Second Division in Awards 3262 and 3263. See also Second Division Award No. 2712.

All of the work performed by the carmen was work belonging to the craft of carmen. The failure to use the lower rated carmen helpers to perform such work during the period from September 29 through November 23, 1959, did not constitute a violation of the agreement. In any event, the organization has furnished no evidence to support its position that carmen performed sufficient carmen helpers' work during this period to warrant the employment of thirteen carmen helpers. In the absence of such evidence, the organization has failed to sustain the burden of proof of its claims.

The claims are 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 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, 3643, 3644, 3723, 3850, 3934 and numerous others, which constitute a line of precedents so numerous, reasonable and well established as to 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 6th day of February, 1963.

DISSENT OF LABOR MEMBERS TO AWARD No. 4114

An award is only as good as the reasoning upon which it is based. There is no reason given for the present negative award except so-called precedent awards. Unfortunately those awards, and likewise the instant award, ignored the primary function of the Adjustment Board, namely to adjust disputes in accordance with the terms of the agreement existing between the parties to said dispute. Upholding the carrier in its unilateral change in the working conditions set forth in the governing agreement is repugnant to the purposes and command of the Railway Labor Act and constitutes an encroachment into the field of collective bargaining. The Division should have held that the carrier's failure to give notice of the desired instant change and negotiate in reference thereto with the statutory representative, as provided by the Railway Labor Act, left the collective agreement in force and required an affirmative award. See Order of Railway Telegraphers vs. Railway Express Agency, 64 S. Ct. 582.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink