

Award No. 5170

Docket No. 4991

2-KCS-FO-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Laborer Willie Fisher, employed at Leesville, Louisiana, was denied and deprived of his seniority and attached service rights and compensation when the position of Laborer at Leesville, La., was abolished, resulting in the furlough of Laborer Fisher, effective September 22, 1964, and the work attached thereto was transferred and assigned to employees of other crafts and classes not holding seniority under the Firemen and Oilers' Agreement.

2. That accordingly the Carrier be ordered to re-establish the position of Laborer Willie Fisher at Leesville, Louisiana, and compensate him for all time lost effective with September 22, 1964.

EMPLOYEES' STATEMENT OF FACTS: Immediately prior to September 22, 1964, the Carrier maintained a shop force of 1 foreman (R. O. Peavy), 1 carman (A. E. Hannan) and 1 laborer, Willie Fisher.

The position of laborer was held by Willie Fisher, hereinafter referred to as the Claimant, who entered the service of the Carrier, as such, on July 1, 1941, remaining in continuous service as a Class C Laborer at Leesville, up to and including September 22, 1964.

Accordingly, the Claimant, by such employment and subsequent service, did establish a "Class C" laborer's date of July 1, 1941, continuing to hold and accumulate such seniority to date under the specific terms of the current agreement governing this class of Employees.

On September 18, 1964, Bulletin Notice was posted at Leesville, La., reading as follows:

'These rules govern the hours of service and working conditions of * * * car department laborers.'

The rule does not describe the work covered by the agreement, but simply lists the various workers covered. It does not make the work exclusive to them. There has been no showing of a violation of the rule.

AWARD

Claim denied."

Also see Second Division Awards 1596, 2059, 2215, 3136 and 3305 for similar findings.

As indicated previously herein, the Firemen and Oilers' Agreement contains no classification of work rule. The scope rule does not describe the work covered by the agreement, but simply lists the job titles. Said rule reads in part:

"These rules govern the hours of service, working conditions and rates of pay . . ." (Job titles omitted.)

Claim should be denied for the following reasons:

1. No rule, practice or probative evidence is cited by the Employees in support of claim.
2. The work of cleaning cars, cleaning up around shop buildings and supplying diesel locomotives has never been contracted to any class or craft of employees exclusively, particularly laborers.
3. Continuous practice for more than 20 years of employees other than laborers performing work of the nature involved in this case does not support the Organization's contention that the exclusive right to the performance of said work rests exclusively with the class or craft of laborers.
4. Continuous practice, absence of complaints or protests and awards of this Board sustain the Carrier's position in this case.

All data contained herein are known or have been made known to representative of claimant by correspondence or in conference as shown by Exhibits 1 to 10, inclusive, attached hereto and made a part hereof.

(Exhibits not reproduced.)

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 employees 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.

This dispute centers on Petitioner's contention that Carrier violated the applicable Agreement by using a foreman and a carman to perform duties belonging to the Laborer positions at Leesville, Louisiana, after it had been abolished on September 22, 1964.

Prior to that date, the shop force was comprised of a foreman, one carman, and a laborer. The position of carman was also discontinued some four months after the Laborer position was abolished.

While some elements of the present case differ, it is substantially similar in the essential facts to the situation we considered in Award 5169, which involved the same Agreement and contracting parties and substantially the same issues, contentions and proof as are now before us. No valid reason is perceived for reaching a different result in the present case, and in line with Award 5169, we will deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5170

In their findings in Award No. 5170, the Majority makes the observation that:

"While some of the elements of the present case differ, it is substantially similar in the essential facts to the situation we considered in Award 5169, which involved the same agreement and contracting parties and substantially the same issues, . . ."

Accordingly, what we have said in the Dissent to Award No. 5169 holds equally true in Award No. 5170. For the same reasons as set forth in the Dissent to Award No. 5169 we dissent.

R. E. Stenzinger
E. J. McDermott
D. S. Anderson
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