

Award No. 5222
Docket No. 4983
2-EJ&E-CM-'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. 20, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Elgin, Joliet and Eastern Railway Company violated the current working agreement when, instead of assigning carman helper Mr. J. Piechowiak to perform carman helper's work, Foreman Reed performed the work of heating and driving rivets on October 28, 1964.

2. That the Elgin, Joliet & Eastern Railway Company be ordered to compensate carman helper Mr. Piechowiak in the amount of one hour and five minutes at the punitive rate account the violation.

EMPLOYEES' STATEMENT OF FACTS: The Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the Carrier, maintains a large repair shop facility at Joliet, Illinois, where it employs a substantial number of carmen and carmen helpers, one of the carman helpers being Mr. J. Piechowiak, hereinafter referred to as the Claimant.

On October 28, 1964, Carmen C. Yard and J. Gura were engaged in making repairs to pulpwood car ends requiring heating and driving of rivets, reaming holes and fitting up hand holds and other parts. Carman Gura was heating, sticking and bucking rivets and Carman Yard was driving rivets. Car Foreman Ullis O. Reed came along and noticed that Carman Gura was having difficulty performing three operations, heating, sticking and bucking rivets, and immediately commenced to perform the work of heating rivets in the oil forge and then sticking the rivets, continuing same for one hour and five minutes.

The practice over the years under the terms of the controlling agreement has been to use three men rivet gangs with one man generally a helper doing the heating and sticking. This fact was brought to Foreman Reed's attention, but he refused to assign a helper and continued to perform the work himself.

Rule 30 of the controlling agreement clearly and unambiguously allows foremen to perform the work of Carmen and/or Carmen Helpers in the exercise of their duties. Referee Howard A. Johnson, in rendering Second Division Award No. 4086 found as follows:

"Under Rule 26 foremen are not prohibited from performing work in the exercise of their duties. Consequently, in order to establish their improper performance of the work of a craft it must be shown not to have been done in the exercise of their duties."

Award 4086 was rendered in a dispute between the Missouri Pacific Railroad Company and its Electrical Workers. That part of Rule 26 of the Missouri Pacific Agreement concerning foremen is identical to Rule 30 of this Carrier's agreement with the Carmen's Organization. In the instant dispute, the Carmen **did not** show that Foreman Reed was not performing the disputed work in the exercise of his duties.

Your Board's attention is also respectfully directed to Second Division Award 2959 where the referee found that:

"Machinists can do all the work of the craft, and therefore since 32 (a) permits a foreman to do the work of a machinist he may also do the work of a machinist helper."

The Carrier respectfully submits that Car Foreman Reed, in instructing Temporary Carman Gura on October 28, 1964, was exercising his normal supervisory duties and that his performance of work in connection with the instruction was incidental to his supervisory function. What further supporting evidence is needed than the undisputed fact that **before** Foreman Reed demonstrated the proper technique for carrying out the riveting assignment, Carmen Gura and Yard were unable to do the job, but, **after** the instruction was given, the two Carmen proceeded to perform the task **without further difficulty**. Clearly, there was a need for instruction and Foreman Reed successfully supplied the necessary instruction.

The Carrier feels it has conclusively shown that neither Rule 129, nor any other part of its agreement with the Organization, was violated by Foreman Reed's performance of work on October 28, 1964. The Carrier has shown that Rule 30 clearly permits the performance of work by a foreman under such circumstances.

In the event your Board elects not to dismiss this claim, and decides to consider it on its merits, the Carrier respectfully requests a denial award.

All information and data contained herein has been discussed with the Organization either in conference or by correspondence.

(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 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 question is whether or not Carrier violated the applicable Agreement when Foreman Reed performed the work of heating and driving rivets for one hour and five minutes on October 28, 1964.

It is entirely clear that such work belongs to carmen and, except in unusual circumstances, is not to be performed by supervisory employes. Uncontroverted statements in the record establish, however, that Reed did the work merely to demonstrate the correct technique and only after he had noticed that Carman Gura was having difficulty with it.

At the time, Gura was working with Carman Yard in repairing a pulp-wood car that was not in the production line. There is no indication that, in heating and driving the rivets, Reed was not acting in good faith and in the regular exercise of his supervisory duties.

Petitioner contends that it is a well established practice to use three-man rivet gangs with one of the three performing the heating and sticking operations. Carrier maintains that while that is the practice where a car is in the production line and the work therefore must be expedited, only two men generally are used for riveting work on cars that are not in the production line. There is no applicable "consist of crews rule" or any other provision in the Agreement that governs the matter and we find no basis for restricting Carrier's authority to determine the number of employes to be assigned to riveting assignments where a car is not in the production line.

The claim accordingly will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5222

We dissent from the basis of the award as premised upon the assumption that Foreman Reed was acting in good faith and in the regular exercise of his supervisory duties while heating and sticking rivets, which brought about this dispute as a violation of Carmen's Rules 127 and 129. Rule 127 reads in pertinent part:

"Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars * * *."

Rule 129 reads in pertinent part:

"Employees regularly assigned to help carmen and apprentices * * * holding on rivets, striking chisel bars, side sets, and backing out punches * * * and all other work generally recognized as carmen's helpers' work, shall be classed as helpers."

The material facts and eyewitness account contained in the submission gives no comfort to the assumption that Foreman Reed was acting in good faith and in the regular exercise of his supervisory duties of heating and sticking rivets.

O. L. Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger