



Award Number 5944

Docket Number 5761

2-TP&W-CM- '70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Carmen)**

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- (1) That under the terms of the applicable Agreement the Carrier improperly denied Lead Carmen J. R. Sargent, E. R. Bell, H. C. Pearson, W. E. Brown and M. S. Kamp the Lead Carmens rate of pay.
- (2) That accordingly, the Carrier be ordered to compensate the aforesaid Carmen for the difference between what they were paid and Lead Carmens rate of pay for October 19, 1967 and all dates subsequent for Carmen H. C. Pearson and M. S. Kamp, October 21, 1967 and all dates subsequent for E. R. Bell and November 25, 1967 and all dates subsequent for J. R. Sargent.

EMPLOYEES' STATEMENT OF FACTS: At Peoria, Illinois there are three shifts of car inspectors employed and a one shift repair track operation on days.

On October 19, 1967 an agreement was entered into between the Toledo, Peoria and Western Railroad Company, hereinafter referred to as the carrier and the employes, providing for a 20¢ per hour differential for carmen operating a unit known as a "Piggypacker" used to load and unload piggyback trailers and containers.

On October 19, 1968 there was one position established on the day shift as a "Piggypacker" operator and when not operating the "Piggypacker" to work on repair track. On November 21, 1967 another position was established working on the second shift as "Piggypacker" operator and when not operating the "Piggypacker" to work as a car inspector. On November 25, 1967 a third position was established with a "Piggypacker" operator assigned on the third shift and when not operating the "Piggypacker" to work as a car inspector on that shift. These are lead carmen (claimants) assigned on each of these three shifts who assign and direct the work of the car inspectors on those shifts, including the inspector assigned as "Piggypacker" operator.

The claimants have been denied 6¢ per hour above the rate of pay received by the "Piggypacker" operator.

Rule 49 states

“assigning and directing work of employees of their respective craft, * * * *”

When carrier has piggyback work to perform, a clerical employee in its yard office calls by telephone to the Car Department Office and advises there is work to perform and the piggyback operator is required to do the work.

The lead carman, if he answers the phone, will then tell the operator there is piggyback work to perform, and the operator proceeds to the yard office for instructions on what there is to load, or unload. The piggyback clerk in the yard office will inform the piggyback operator what work is to be performed, and they both go out to the piggyback track. The piggyback operator picks up and spots the trailers and/or containers to the track, then operates the piggyback at the direction of the clerk who is on the ground giving signals.

It is important to note that the lead carman is not present at this time, he is not directing the work, he is not telling the piggyback operator what he has to load or unload, and he does not assign the operator at any particular hour to perform the work. The assigning and directing of the work is given by the piggyback clerk on duty.

This is the reason carrier has maintained its position that Rule 49 does not apply to this particular rated job.

Organization has stated that in the agreement providing for a differential of 6¢ per hour for carmen required to carry and use the radio, there was no issue raised by carrier in the application of Rule 49. However, the agreement for use of radio provides the rate be applied to two carmen per shift—one is a lead carman and he receives the 6¢ rate in accord with radio agreement, not because of Rule 49 of the agreement.

Rule 49 has been applied correctly in the instances where test rack operator, and welder are working under the direction and supervision of the lead carman.

However the piggyback operator is not working under the direction or supervision of the lead carman. He is working under the direction of the piggyback clerk.

CONCLUSION:

Carrier does not believe it has violated the current agreement. The rate for the piggyback operator was created as a special rate applicable only to the operator of the piggyback because of the nature of the work performed.

The piggyback operator does not work under the direction of the lead man, and therefore carrier does not believe that Rule 49 should be applied, and that claim of organization 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 employee or employees involved in this dispute are respectively carrier and employee 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.

In July of 1967 Carrier acquired a machine known as a "Piggypacker" which is used to load and unload containers and vans. The parties subsequently entered into a Memorandum Agreement that employees used to operate the "Piggypacker" would be paid a 20¢ per hour differential. The agreement provided that those carmen bulletined as "Piggypacker" operators would be paid the 20¢ differential for the entire tour of duty, whether or not they operated the "Piggypacker". Unbulletined carmen who were used to operate the "Piggypacker" were paid the 20¢ differential only during periods of actual operation.

Claimants in this dispute are Lead Carmen who contend that under the provisions of Rule 49 of the schedule agreement they are entitled to be paid 6¢ an hour above what was paid "Piggypacker" operators.

Rule 49 reads as follows:

"Mechanics of their respective crafts designated to act as leaders, assigning and directing the work of employees of their respective craft, will be paid 6 cents per hour above the highest rated mechanic's position under their direction. Rule 16 (Bulletin Rule) to govern in filling such position.

Carrier takes the position that the "Piggypacker" rates was negotiated as a separate agreement, and that the "Piggypacker" operator does not perform "Piggypacker" work under the direction of the Lead Carmen.

While it is correct that the "Piggypacker" operator does not perform such work under the direction of the Lead Carmen, the record indicates that the Lead Carmen assign the "Piggypacker" operator to perform such work when necessary, and work under their direction on all other work. The record does not indicate how much time is spent on the "Piggypacker".

Under the circumstances, Rule 49 cannot be ignored. The claims should be sustained.

A W A R D

Claims are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June, 1970.

**CARRIER MEMBERS' DISSENT TO AWARD NO. 5944, DOCKET NO.
5761**

Referee Nicholas H. Zumas

Under the particular circumstances in this case, Rule 49 was not applicable, however, the Referee held otherwise. He acknowledges that "the Piggypacker operator does not perform such work under the direction of the Lead Carman" and that "the record does not indicate how much time is spent on the "Piggypacker" yet the award has been sustained in toto. Rule 49 provides for the 6 cents per hour differential to be paid Lead Carmen above the highest rated mechanic's position under their direction. It is clearly evident the award should have required the parties to determine the number of hours the "Piggypacker" works under the direction of the Lead Carmen and compensate them accordingly.

For these reasons we dissent.

**/s/ H. S. TANSLEY
H. S. Tansley**

**/s/ H. F. M. BRAIDWOOD
H. F. M. Braidwood**

**/s/ W. R. HARRIS
W. R. Harris**

**/s/ P. R. HUMPHREYS
P. R. Humphreys**

**/s/ J. R. MATHIEU
J. R. Mathieu**