



Award No. 6137
Docket No. 5954
2-N&W-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk and Western Railway Company, violated the Agreement, and past practice of long standing, when on the respective dates of May 24 and June 14, 1968, regularly assigned Car Repairer Helpers, were taken out of the Shop, after beginning their tour of duty and put to work oiling and blue-flagging trains in the Yard, while other employes performed the work of their regular assignments on the Shop-Track.

2. That Norfolk and Western Railway Company, be ordered to allow each of the following named Helper Carmen, S. E. Thompson, Z. W. Lawrence and W. E. Bridges, who were regularly assigned to the Yard, but not called or used on said dates, eight (8) hours' pay at the time and one-half rate, because of such violation and loss.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains at Elmore, West Virginia, a point on the New River Division (formerly VGN) a shop and train yard and the necessary facilities for repairing, servicing and inspecting trains and cars.

Though there is one common roster for helper carmen at Elmore, the jobs are advertised, bid and awarded separately. That is, men who bid in shop-jobs are awarded shop-jobs and who bid in yard-jobs are awarded the yard-jobs, the duties of which consist of oiling and blueflagging cars and trains in the yard, while the duties of those on the shop-jobs consist of helping car repairers at that location. In addition thereto, separate extra and overtime-boards are maintained for those assigned at each respective location, shop-track or train-yard as the case may be, for the purpose of distributing the extra and overtime work, among those assigned at the respective locations, as a means of complying with rule No. 10(c), of the current working agreement.

December 22, 1957 in which a carman was sent from the repair track to the transportation yard to augment the yard forces. It is, therefore, an undeniable fact that at Elmore the practice of supplementing yard forces from the repair track has been accepted and in existence at least ten years prior to the initiation of the instant claim. Regarding the importance of past practices your board very aptly held in Award 2603:

"There is no better established nor more wholesome rule for the proper application of an agreement than that the parties will be bound by the construction which they have mutually placed on it over a long period of time."

In summary, the carrier has shown:

1. The carrier and organization agree on the purpose of the wording of bulletins advertising jobs.
2. The carrier and organization agree on the past practice concerning interchangeability of employees, their duties, and work locations.
3. The agreement provides for the circumstances involved in this dispute and carrier complied with the Agreement.
4. There was no violation of the agreement and, in fact, Carrier's conduct was in strict conformance with established and accepted practice.
5. Your board has ruled in favor of the carrier in similar circumstances.

The claim is without merit and the carrier requests that it be denied in its entirety.

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.

The Carrier employs a number of Car Repairer Helpers at its installation in Elmore, West Virginia, a certain number of whom work in the Shop while others are gainfully employed in Yard jobs. The issue presented is whether or not Carrier violated the Agreement, when on dates specified in the claim, helpers from the Shop were moved to the Yard to perform work.

The Organization contends that there is one seniority roster for all helpers, but that the jobs are advertised, bid and awarded separately, that is, men

bidding for Shop Jobs are awarded Shop jobs and those bidding for yard jobs are awarded yard jobs. Furthermore, they aver that separate extra and overtime boards are maintained for those assigned at each location in order to enable proper distribution of extra and overtime work to those assigned at their respective locations.

The Petitioner relies principally on Rules 10(C) and (E) of the basic Agreement, which read as follows:

“(C) Record will be kept of overtime worked and employees qualified in same line of work will be called with the purpose in view of distributing the overtime as equally as possible.

“(E) Work on unassigned days: Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employees.”

Petitioner submits that the work involved was extra or overtime work, and should have been performed by Claimants who were regularly employed in the Yard, that helpers cannot be used interchangeably between the two locations. They further contend that the work was not part of any assignment and since there were no unassigned employees available who would not have had 40 hours of work that week on the dates in question, Claimants were accordingly damaged and should be made whole.

Carrier alleges that on the dates in question, additional help was required in the yard and that conditions were such in the Shop that 2 Carmen helpers could be spared one day and one helper the other day without calling additional helpers to work. Carrier further states that “it has been a long standing practice at Elmore that when no overtime is involved employees assigned to the repair track are sent to the yard to fill vacancies or to supplement the yard forces when necessary. As concrete example, day-to-day vacancies in the yard are filled from the repair track when these employees can be spared without resorting to the overtime board; bulletined vacancies in the yard are invariably filled during the advertising period of the bulletin by sending helpers from the repair track. Through unrestricted exercise of managerial discretion, Carrier has for years, without serious challenge, adjusted forces in this manner.”

They further refer s to the Classification of Work Rule, Rule 112, and state categorically that there is nothing contained therein which gives claimants the right to choose the particular type of work he will perform.

We have examined Rule 112 very carefully and agree with the analysis submitted to us by the Carrier, that is, that the title of the job does not grant to the employee filling it the exclusive right to perform the duties inherent in the title, and it does not preclude him from performing any other work assigned to him coming within the purview of the helper classification. All helpers are on a common seniority roster and we can find no rule in the Agreement which would prohibit their use within their own seniority district.

This is simply a case where additional help was needed in the yard, and shop men could be spared; since no extra employees were called, no overtime

was involved, hence the use of the overtime boards in the Shop and Yard was not required. Additionally, from a review of the evidence before us, the interchanging of helpers from the Shop to the Yard has been of long standing. It is true that when overtime is required then, as illustrated by the employees' exhibits, the separate overtime boards dictate the assignments. This has been long established practice, but where overtime is not involved, as in the instant case, that practice has no relevance. For the foregoing reasons, we will deny the claim.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 21st day of April, 1971.