

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: ( System Federation No. 121, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Texas and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Carrier improperly assigned Carman Helper Harvey Lancaster to perform Carmen's work on July 10, 11, 17 and 18, 1973, in violation of the controlling Agreement.
2. That accordingly, the Carrier be ordered to additionally compensate the following Carmen eight (8) hours at the time and one-half rate for the dates specified: W. L. LaRue, July 10, and 17, 1973; L. R. Oden, July 11, 1973; W. O. Harless, July 18, 1973.

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.

It is the Employees contention that on July 10, 11, 17 and 18, 1973, Carrier improperly assigned Carmen Helper Harvey Lancaster to perform Carmen's work at Marshall, Texas. The work consisted of laying out and preparing wooden lining which was to be applied to the interior of box cars and the actual nailing of said wooden lining to the box cars. The Employees argue that claimants, the regularly assigned Carmen at Carrier's Mechanical Department, were entitled to perform the foregoing work. They cite Rule 21, Seniority, Rule 22, Assignment of Work and place particular emphasis on Rule 83, Classification of Work, to support their position. They further aver that nowhere in Rule 84, the Classification of Work Rule for Carmen Helpers, is there language giving Carmen Helpers the right to build, maintain and inspect passenger and freight cars.

Carrier retorts, however, that on the claim dates Carmen Helper Lancaster was assigned to work with Carman Sanders who was applying interior lining to box cars. Carrier agrees that Lancaster performed the duties here complained of, but stresses that nothing in the Agreement or in the practice on this property precludes a Carmen Helper from assisting a Carman in the preparing and affixing lining to the interior of boxcars.

It stands unchallenged that work reserved exclusively to Carmen, by either contract or past practice, cannot be assigned to employees of another class or craft, including Carmen Helpers. Yet, in the claim at hand, the Employees have not established that the work of preparing and affixing lining to the interior of boxcars is work reserved exclusively to employees of the Carmen's craft. While it is indeed true that Rule 83 grants to Carmen the right to build, maintain and inspect all freight cars, that Rule cannot be construed to give Carmen the exclusive right to lay out and prepare wooden lining for the interior of boxcars and the attendant nailing of such in place. Nor has evidence been presented which would establish that Carmen have performed this work in the past to the exclusion of all other crafts and classes of employees.

All that Lancaster did was to assist Carman Sanders in preparing and affixing wooden lining to the interior of boxcars which work he was not proscribed from performing by either the Agreement or by past practice. The claim consequently lacks support and will be denied as a result.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of December, 1975.

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G. M. YOUHN

REFEREE'S ANSWER TO LABOR MEMBERS'  
DISSENT TO AWARD NO. 6975

*D.*  
*Noted*  
*my*

While it should be readily apparent to all members of the Second Division of the National Railroad Adjustment Board that the undersigned is reluctant to answer Dissents to Awards in which he has participated as a Referee, in the instant case an exception must be made. I must respectfully disagree with the Labor Members' Dissent relative to the conclusions reached by the majority in Award No. 6975. Yet, I must agree with them relative to the language of said Award.

In the Award, the majority held, in pertinent part:

"Nor has evidence been presented which would establish that Carmen have performed this work (preparing and affixing lining to the interior of boxcars) in the part to the exclusion of all other crafts and classes of employees."

The Labor Members argue that in so Finding, the majority has exceeded their authority inasmuch as the Carrier never contended that any classes or crafts of employees were involved other than Carmen. In order to dispel any misapplication of the Findings in Award No. 6975, this Referee must concur in the Labor Members' contention that the Carmen's craft was the only craft involved in that dispute. All the Board found in Award No. 6975 was that Carmen Helpers were not precluded from assisting a Carman in preparing and affixing wooden lining to the interior of box cars. The Board did not hold that employees of another craft or class could assist Carmen in performing the aforementioned work. That contention was not made by the Carrier and it was not the intention of the majority to raise such contention when they held that Carmen Helpers could assist a Carman in preparing and affixing wooden lining to the interior of boxcars.

*Robert M. O'Brien*

Robert M. O'Brien

JAN 16 1976

G. M. YOUHN'

LABOR MEMBERS' DISSENT TO AWARD NO. 6975, DOCKET NO. 6767

This case involves a dispute between the Brotherhood Railway Carmen of the United States and Canada of System Federation No. 121 and the Texas and Pacific Railroad Company, as to whether the Carmen Helpers under the Collective Bargaining Agreement were entitled to preparing and affixing lining to the interior of freight cars over that of Carmen [Mechanics]. No other class or craft was involved in this dispute..

The majority stated in the Findings in Award No. 6975:

"It stands unchallenged that work reserved exclusively to Carmen, by either contract or past practice, cannot be assigned to employees of another class or craft, including Carmen Helpers. Yet, in the claim at hand, the Employees have not established that the work of preparing and affixing lining to the interior of boxcars is work reserved exclusively to employees of the Carmen's craft. While it is indeed true that Rule 83 grants to Carmen the right to build, maintain and inspect all freight cars, that Rule cannot be construed to give Carmen the exclusive right to lay out and prepare wooden lining for the interior of boxcars and the attendant nailing of such in place. Nor has evidence been presented which would establish that Carmen have performed this work in the past to the exclusion of all other crafts and classes of employees."

It is beyond the comprehension of the Labor Members as to how the majority arrived at the conclusion that the preparing and affixing lining to the interior of freight cars was not covered in Rule 83 of the Collective Bargaining Agreement. Rule 83 reads in part:

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

The preparing and affixing of linings to the interior of freight cars fall within the meaning of the word maintaining as much as removing and replacing couplers, draft gears, wheels, side sheets, roof, safety appliance and etc.

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The American College Dictionary define 'maintain' as:

"to keep in due condition, operation or force; keep unimpaired; to keep in a special state position, etc."

There is no language in Rule 84 classification of work rule for Carmen Helpers giving Helpers the right to build, maintain and inspect passenger and freight cars.

To compound the error the majority stated:

"Nor has evidence been presented which would establish that Carmen have performed this work in the past to the exclusion of all other crafts and classes of employees."

As heretofore stated this dispute involved Carmen Helpers preparing and affixing lining to the interior of freight cars. There is no evidence of record that the Carrier contended that any other classes or crafts were involved. For the majority to include other crafts and classes is in violation of Circular No. 1, Rules of procedure of the National Railroad Adjustment Board reading:

"Position of Carrier: Under this caption the Carrier must clearly and briefly set forth all relevant, argumentative facts including all documentary evidence submitted in exhibit form, quoting the Agreement or rules involved, if any, and all data submitted in support of Carrier's position must affirmatively show the same to have been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute.

LABOR MEMBERS' DISSENT TO AWARD NO. 6975, DOCKET NO. 6767

Therefore when the majority included other crafts and classes of employes in their "Finding" they exceeded the authority of this Division of the National Railroad Adjustment Board.


For all of the foregoing reasons we are compelled to dissent.

  
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William O. Hearn

  
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D. S. Anderson

  
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G. R. DeHague

  
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M. J. Cullen

  
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J. G. Hayes