

Award No. 528
Docket No. 504
2-IC(Y&MV)-CM-'41

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)

ILLINOIS CENTRAL SYSTEM
(YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY)

DISPUTE: CLAIM OF EMPLOYES: That practice of sending car oilers out on line of road to inspect and repair cars that have been set out on line of road account of hot box be discontinued, and that Carman M. B. Chaney at Shreveport, Louisiana, be compensated for six hours at carman's straight time rate and one hour at carman's overtime rate account of a car oiler being sent out on line of road to inspect and repair a loaded car that had been set out at Sibley, Louisiana, on July 18, 1939.

EMPLOYES' STATEMENT OF FACTS: Car Oiler Buster Joiner, at Shreveport, Louisiana, was sent out on line of road July 18, 1939, to inspect and repair RPX 3349, a loaded car, that had been set out account of hot box at Sibley, Louisiana.

POSITION OF EMPLOYES: Buster Joiner, who is an oiler at Shreveport, Louisiana, was sent out on line of road on July 18, 1939 to inspect and repair RPX 3349, a loaded car that had been set out at Sibley, Louisiana, for a hot box. A carman, and not an oiler, should have been used on this assignment, and in support of our contention, quote below Rule 137 of the carmen's special rules of the agreement in effect between the Illinois Central System and the System Federation No. 99:

"When necessary to repair or inspect cars on the road or away from the shops, carmen with sufficient help will be sent out to perform such work if it is necessary."

In handling with the carrier for payment of this claim, carrier's representative took the position that this assignment belongs to car oilers under Rule 129 of this same agreement, and in his reply quoted this rule in part, as follows:

"* * * applying, fitting and removing car and tender truck journal bearings, * * *"

We desire to point out that in their effort to circumvent the intent of the rules, the carrier has purposely omitted a very important part of this rule, which really reads in part as follows:

The granting of this request would simply place an interpretation on the rule not contemplated when negotiated, nor practiced since 1922, excepting as explained when it could not be avoided. When habit, custom and practice of past application of years standing squares with the language of the rules, it is difficult to understand how it can be nullified upon a claim that cannot be supported by evidence of fact or logic.

At the time the agreement was negotiated, machinist helpers at East St. Louis were applying, fitting and removing tender journal bearings, packing same, and/or applying free oil, helping carman change tender truck wheels and apply curtains. The following letter dated October 28, 1935, was addressed to general supt. motive power of the carrier by the general chairman representing the carmen on this property:

"I am submitting to you for your consideration and decision the case of Machinist Helpers doing Carmen Helper's work.

We have approximately thirty (30) to forty (40) engines being serviced daily at the East St. Louis roundhouse and the Machinist helpers are assigned to the servicing of the tender truck journals.

It is the contention of the local committee that this is properly the work of Carmen Helpers as covered by Rule No. 129 of the current agreement, and as the roundhouse is just a few steps from the car department where we have Carmen Helpers employed we are asking that carmen helpers be assigned to this work.

Trusting that you will have this condition corrected and advise."

On November 16, 1935, the practice was changed and this work given to carmen helpers.

As the existing schedule was effective April 1, 1935, the above action is indicative of almost immediate assertion that the work enumerated belonged to carmen helpers.

If this work belonged to carmen helpers at East St. Louis, it is only fair to assume that it also belonged to them at all other points on the property.

Carrier requests that claim 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 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.

The parties to said dispute were given due notice of hearing thereon.

Rule 137 provides that: "When necessary to repair or inspect cars on the road or away from the shops, carmen with sufficient help will be sent out to perform such work if it is necessary." Carman helper should not be sent on the road or away from shops unless he is to be worked with a carman.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1941.