

Award No. 1296

Docket No. 1211

2-ACL-FO-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Firemen & Oilers)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the carrier was not authorized to displace laborers used as inside hostler helpers with locomotive firemen on or before April 9, 1946.

2. That accordingly the carrier be ordered to restore said work to laborers and reimburse laborers furloughed as result of being deprived of said work, with pay for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: At Savannah, Georgia, the carrier maintains a force of employees subject to the firemen and oilers' agreement around the clock in the roundhouse, and during the month of January, 1948, approximately 673 engines were handled, which is substantiated by copy of the submitted list of engines serviced by the inside handling force on each shift, identified as Exhibit A.

Prior to April 9, 1946, one laborer on the 7 A. M. to 3 P. M. shift, one laborer on the 3 P. M. to 11 P. M. shift, and two laborers on the 11 P. M. to 7 A. M. shift regularly performed all inside hostler helpers' work, and in connection therewith some outside hostler helpers' work. However, on April 9, 1946, the carrier advised the undersigned that all laborers had been taken off the work and that the jobs would be protected by firemen, which is affirmed by the copy of letter submitted and identified as Exhibit B.

The substitution of firemen for laborers to perform inside hostler helpers' work resulted in reducing the force of laborers, and the carrier has declined to adjust this dispute.

The Agreement, effective June 1, 1941, is controlling.

POSITION OF EMPLOYEES: It is submitted that under Rule 1, reading:

"The following rules govern employees in the Mechanical Department as follows:

Power House Engineers
Stationary Firemen

POSITION OF CARRIER: It is the carrier's position that Commander established no seniority rights through his temporary assignment to position of outside hostler helper, and that he is not entitled to be reinstated to this position either with or without pay for lost time. It is further the position of the carrier that there are no inside hostler helpers' positions at Southover shops, and that, therefore, laborers generally are not entitled to assignment to non-existent positions.

Rule 1 of the current working agreement, set out in full in the carrier's statement of facts, is a scope rule. It merely designates the positions to which the other working rules of the current agreement will be applicable. This rule does not operate to confer title to any portion of the work upon laborers unless the positions designated in this rule are established and are available. No such positions have been in existence at Southover Yards since the execution of this agreement in 1941, nor indeed for a period of at least fifteen (15) years prior to June 1, 1948. (See carrier's Exhibits C and D.)

All of the positions here in dispute are designated outside hostler helpers, since the transfer of locomotives from shops to station, or vice versa, is involved in each assignment. Therefore, the assignment of men to these positions is made from outside hostler helpers, and is properly so made, as these positions are subject to the current working agreement with the employees represented by the Brotherhood of Locomotive Firemen and Engineers. This claim arises out of the use of laborers in these positions in a period of temporary emergency. Having enjoyed the fruits of a temporary assignment which was more lucrative than that of a laborer's position, the organization is now fighting to retain the benefits which it secured by chance and not by operation of the working agreement, even though the result would be the usurpation of rights which belong to another craft.

In this connection the carrier refers to Rule 9 (e), set out in statement of facts, by which the Board will note that no seniority rights are acquired by reason of temporary assignments to other classifications, whether covered by the firemen's and oilers' agreement or not. Therefore, Commander, because of his temporary assignment to position of outside hostler helper, acquired no rights to continue in this position. This assignment was the origin of the broader claim to which Mr. Smith converted his original demand. It is without foundation, and furnishes no basis either for the original or for the subsequent claim. Rule 14 of the current working agreement requires that an employee temporarily filling a position in another classification receiving a higher rate of pay shall receive the higher rate each hour so assigned. Commander was paid the rate for outside hostler helper for all time on this position.

Carrier contends there has been no violation of the agreement, and respectfully requests the National Railroad Adjustment Board to deny this claim.

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.

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

Rule 1 (scope rule) of the controlling firemen and oilers' agreement reserves to the employees covered therein the work of inside hostler helper. The regular performance of such work at the Southover shops, Savannah, Georgia, during the period of time involved in this dispute, supports the claim that the employees subject to the firemen and oilers' agreement should have been assigned to those jobs. The carrier may not successfully avoid the purport of Rule 1 by merely withholding from the employees engaged in that work the designation of the appropriate job title.

However, it appears from the record in this case that, on the days in question, the several employes involved in this dispute performed both inside and outside hostler helpers' work. Their assignments to simultaneous work in the two distinct work categories was only temporary. This feature distinguishes this case from Award 1232. Furthermore, the extent to which their work was apportioned between the two work classifications is not shown. The facts preclude the granting of any back pay award.

Since the carrier's practice at the Southover shops concerning inside hostler helpers' jobs is inconsistent with the provisions of Rule 1, the Second Division returns the case to the parties, and directs them to make such adjustments with respect to the future operations at these shops as may be necessary to conform to and fulfill the provisions of the scope rule.

AWARD

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1949.