Award No. 1406
Docket No. 1326
2-FEC-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 69, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That since about August 19, 1949, the carrier unjustly terminated the service rights of a rostered force of hose cutter employes when their duties were assigned to train service yardmen, and that accordingly the carrier be ordered to restore these employes to their prior service rights with pay for all time lost by any of them retroactive to the aforementioned date.

EMPLOYES' STATEMENT OF FACTS: Prior to August 19, 1949, the carrier maintained for many years at its Miami, Florida, terminal a force of employes classified as hose cutters, and the rostered force thereof as of April 1, 1949, follows:

NAME	SENIORITY DATE
Lee Worthy	August 1, 1935
J. B. Holt	November 8, 1937
A. L. Shepp	December 31, 1937
Rudolph Jenkins	March 24, 1941
Thomas Frederick	September 11, 1941
Henry Robinson	February 25, 1942
David Miniefield	November 21, 1942
Muge Rivers	February 25, 1943
Joseph Rogers	February 8, 1944
Frank Brown	February 28, 1946
J. C. Conner	March 6, 1946
Nathaniel Ramsey	March 29, 1946
O. B. Ingraham	April 5, 1946
E. E. Kerr	May 29, 1946
J. W. Williams, Jr.	November 4, 1946
T. A. Williams	December 13, 1946
D. C. Hubert	December 30, 1946
John L. English	January 20, 1947
C. J. Bruton	November 13, 1947
Junious Jackson, Jr.	December 4, 1947
W. E. Parks	December 13, 1947
B. F. Brown	February 17, 1948
Anderson Young	April 3, 1948
Prince Williams	March 1, 1949

1929, which required the railway to discontinue the practice of having yardmen couple and uncouple hose in that terminal when switching under a rule of the yardmen's agreement, and this expedient was continued until the work could again be performed by yardmen. When that time arrived hose cutters were discontinued and such action was not violative of any of the several conditions applying to their service that were created by the letters of understanding. Having not established any rights to hose coupling and uncoupling they lost no rights when the railway arranged for other employes to perform this work in Miami Terminal as it had been done in all other terminals during the 20 years that hose cutters were used at Miami.

Their term of employment was definitely limited by the nature of the work done and there can be no dispute about the fact that the railway had the same freedom of action in assigning this work to other employes in 1949 that it had in 1929 when it was made available to hose cutters. No craft or group of employes may claim it as an exclusive field of work and the railway simply eliminated jobs that were not needed.

The instant claim is utterly without merit and 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 employe or employes 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.

This case and decision thereof is limited solely to the Miami Terminal Area. There the Hose Cutters here involved were originally employed as laborers to couple and uncouple steam and air hose throughout the Miami Terminal because the Southeastern Train Service Board of Adjustment had decided in Docket 417 that at that point, where car inspectors were employed, yardmen were by Rule 40(a) of their Agreement, not required to couple and uncouple steam or air hose.

On August 27, 1934 the representative herein was certified to represent such Hose Cutters, which the National Mediation Board in Case No. 778 reaffirmed on January 30, 1942. Subsequently on February 1 to 15, 1943, a special letter agreement was negotiated, supplemented on July 9, 12, 1949, providing substantially for minimum hourly rates of pay, overtime, contingent increases in rates of pay, the handling of grievances as generally practiced, starting and quitting time paralleling those of switching crews with whom they were assigned to work, performance of unassigned work or filling vacancies, and seniority. Such agreement also contained a provision that the understanding would not be changed but remain in effect until changed in accordance with the Railway Labor Act as amended. As supplemented it also contained provisions for an increase of hourly rates of pay effective September 1, 1949, and established a forty-hour week.

The agreement contained no specific classification of work rule, but that was well understood by the carrier and employes over all the period of their employment. Concededly, the exigencies of the particular situation requiring their employment at the point involved of itself classified their work as coupling and uncoupling steam and air hose. The very name "Hose Cutter" given them by the carrier was of itself a classification.

On April 1, 1949, the carrier negotiated a new agreement with Trainmen and Yardmen, in which Hose Cutters had no part, providing substantially, with exceptions, that at points where car inspectors were employed, trainmen and yardmen when authoritatively required "to couple or uncouple hose (air,

signal or steam), each trainman or yardman who is a member of the crew performing the work will be paid an arbitrary allowance of one (1) hour at the straight time rate."

Subsequently, between July 10, 1949 and August 17, 1949 (almost immediately after negotiating a supplemental agreement with claimants) the assignments of all Hose Cutters were abolished and the work formerly done by them was unilaterally assigned by the carrier to Trainmen and Yardmen under the provision of their April 1, 1949 agreement.

In December 1949 and January 1950 eleven of the Hose Cutters under duress by fear of continued unemployment and economic necessity resigned as Hose Cutters and accepted other employment with the carrier. Under the circumstances we cannot conclude that such resignations had any binding validity.

Whether or not various classes of employes may ordinarily perform the work here involved is beside the question in this case, because by agreement at the particular point involved, it was exclusively given to a particular class, the claimants herein. This case is not one where the carrier has abolished a position no longer needed to be worked, but it is one wherein work still existent and contractually belonging to a particular class of employes at a particular point was transferred, or assigned, to an entirely different class of employes under another agreement without any negotiations between the respective representatives and the carrier, or in any manner as provided by the Railway Labor Act.

In Award 340 it was concluded that when the requirements of agreements with various organizations appear, as here, to be in conflict, there should be negotiations between such organizations as are involved and the carrier for the purpose of fairly disposing of such matters. The Railway Labor Act specifically provides that the carrier cannot "change the rates of pay, rules or working conditions of its employes, as a class as embodied in agreements, except in the manner prescribed in such agreements, or in Section 6 of this Act."

Under the circumstances here presented the Division concludes that the carrier unjustly terminated the service rights of claimants in violation of their agreement, except claimant Lee Worthy, who, as shown by this record, resigned prior to this dispute. Therefore except as to claimant, Lee Worthy, claimants are ordered restored to their prior service rights unimpaired and paid for all time lost, if any, after deducting all wages earned in any other employment, including those earned while employed by the carrier, from August 19, 1949 to the effective date of this award.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Dorothy T. Fountaine
Acting Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1950.