

**Award No. 1467**

**Docket No. 1348**

**2-ART-CM-'51**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

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**PARTIES TO DISPUTE:**

**BROTHERHOOD RAILWAY CARMEN OF AMERICA,  
RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.**

**AMERICAN REFRIGERATOR TRANSIT COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That removing and applying sides, ends and roofs, from and to cars, and the building and repairing of trucks in connection with building, maintaining and dismantling of refrigerator cars, is carmen's work under the current agreement.

2. That it is improper under the current agreement to assign other than carmen to operate hoisting machines to assist carmen in performing the aforesaid work.

3. That accordingly the company be ordered to assign carmen to perform the work above mentioned.

**EMPLOYES' STATEMENT OF FACTS:** This company maintains facilities at St. Louis, Missouri, Kansas City, Kansas and Pueblo, Colorado in the car departments for the building, maintaining and repairing freight refrigerator cars, including a force of approximately 550 carmen, apprentices and carmen helpers at all three points.

At the St. Louis shop, which is the largest of the three and considered the main point, this company is rebuilding wood superstructure body cars, replacing wood post and braces with steel. The company operates this shop on a progressive system. The cars go through a series of operations: First, the cars are stripped of all wood down to the underframe by carmen helpers, after which carmen inspect the trucks, air lines, brake connections and steel underframe. After the trucks and underframes are repaired, the car is moved to the wood track where the side sills, the steel superstructure, (body frame work), siding, roofing, flooring and all insulation is applied; the car moving from one position to the next until finally completed.

The repairing of heavy repair cars at St. Louis, is all done by carmen including hoisting heavy portions of cars, such as tops of cars, consisting of side-plates, end-plates, carlines, ceiling and roof insulation, (all intact), steel side frames welded together. The raising or lowering these portions of cars, is done by an overhead electric crane, operated by a carman.

pute. The classification of work Rules Nos. 47 and 48 in the current agreement were the subject of much negotiation and several changes were made and the classification of carmen helpers operating boom tractor equipment was accepted by the organization, in that no change was requested. Rule No. 48 of this agreement classifies helpers, "\* \* \* employes regularly assigned to help carmen \* \* \*," and classifies helper's work, in addition to specific duties named, "\* \* \* all other work generally recognized as Carman Helper's work".

The work of operating boom tractor has been recognized as carmen helper's work for more than ten years during which time boom tractors have been used in the company shops. Boom tractor operators of the carmen helper's group hold seniority as such and are entitled to the work that they have performed for all of these years.

The company contends that the use of a boom tractor, operated by carmen helpers, to raise and lower heavy parts applied or removed by carmen mechanics is a proper practice established and agreed to over a period of many years of operation, and that it is entirely proper under the rules of the current agreement. The company also contends that the decisions in Awards Nos. 1363 and 244, which are not comparable cases, cannot be used to provide, in effect, a new classification of work rule in the controlling agreement as such new rule can be made only by negotiations between the parties to the agreement and it respectfully requests your Honorable Board to so rule.

Submitted herewith, as Exhibits Nos. 1 to 6, inclusive, are copies of all correspondence with the organization regarding this dispute.

(Exhibits not reproduced.)

**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.

The carrier has facilities for the building, maintaining and repairing of freight refrigerator cars at St. Louis, Missouri, Kansas City, Kansas, and Pueblo, Colorado. The repairing of heavy repair cars in St. Louis is done with the assistance of an overhead, electric crane which is operated by a carman. At the Pueblo shops, light repair cars are repaired, but in addition thereto, they repair or rebuild one heavy car per day. In doing this work, a tractor equipped with a boom is utilized in making heavy lifts. The tractor is operated by a carman helper. The organization contends that the work of operating the tractor while performing this work belongs to carmen.

The heavy lifting here involved is in connection with the construction, maintenance and repair of refrigerator cars and is described as the hoisting and lowering of steel framework sections of a car in removing and applying assembled sides, ends and roofs, and the dismantling and assembling of car trucks in the removal and replacement of wheels. When the boom tractor is not available it is entirely proper to have the work performed by carmen. In either event, the work is performed under the direction and supervision of a carman. The boom tractor operator does not leave his place on the tractor. The question to be resolved is whether the work of operating a boom tractor may properly be assigned to a carman helper during the time it is engaged in assisting with carman's work.

Carmen's work is defined by Rule 47, current agreement, which states in part:

"Carmen's work (including regular and helper apprentices) shall consist of building, maintaining, dismantling, painting, and inspecting all express and freight refrigerator cars, both wood and steel, \* \* \* and all other work generally recognized as carmen's work."

We are in accord with the views of the organization that the work performed by the boom tractor in assisting carmen mechanics would properly be performed by carmen mechanics. But can it be performed by carmen helpers? Carmen helpers' work is defined by Rule 48, current agreement, which states in part:

"Carmen Helpers, employees regularly assigned to help carmen and apprentices, employees engaged in stripping bodies of wood superstructure cars for heavy repairs, \* \* \*, assisting carmen in jacking up cars, \* \* \*, and all other work generally recognized as carmen's helpers work shall be classed as helpers."

Considering Rules 47 and 48 in their proper light, we think a carman helper can properly be used in lifting parts to and from a car being dismantled, repaired or rebuilt. The very name "carman helper" indicates that he may assist in the unskilled portion of a carman mechanic's work. Lifting heavy parts from or to a car is unskilled labor of which a carman mechanic cannot claim the exclusive right to perform under the cited rules. It is clear that the boom tractor merely does the lifting work which a carman helper could properly do. Certainly, then, it is no violation of the agreement to permit a carman helper to do with a boom tractor that which he could do with his hands.

This appears to have been the interpretation which the parties have mutually placed upon it in the past. The record shows that carmen helpers have operated the boom tractors while performing this work for a great many years. Carrier states that self-propelled boom crane tractors were first placed in service in 1932. Carmen helpers were assigned to operate them and they have been operated by carmen helpers since that date. The present organization became the representative of carrier's shop employes in 1937. A new agreement was negotiated in 1939, and a second in 1944. In neither of these was any change made bearing upon the right of carmen helpers to operate boom tractors. Carmen helpers continue to operate boom tractors. It is a cardinal rule of construction that the interpretation which the parties to an agreement put upon it, is a highly important factor in determining the meaning of an agreement which is lacking in definiteness. We think that employes by their conduct have in effect agreed that carmen helpers can operate boom tractors while assisting carmen mechanics in their work under the circumstances here shown. The conduct of the parties, the meaning applied and acquiesced in by the parties, the want of objection throughout the years, and the negotiation of new agreements without controlling changes of language dealing with the operation of boom tractors by carmen helpers, constitute very convincing evidence of the meaning of the contract. Award 1397, Second Division; Award 2436, Third Division. We hold, therefore, that the operation of boom tractors in assisting carmen mechanics can properly be assigned to carmen helpers and that the position of the carrier in the present dispute is the correct one.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July, 1951.