

Award No. 1554

Docket No. 1432

2-UT-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That under the current agreement and particularly Rule 43 the work of riding switch engines for the purpose of coupling air hoses in connection with switching passenger cars is Carmen Helpers' work and not that of Coach Cleaners and extra locomotive firemen.

(b) That accordingly the Carrier be ordered to:

(1) Discontinue the assignment of Coach Cleaners, extra firemen or any other class of employees to perform the aforesaid work and properly assign it to Carmen Helpers.

(2) Compensate Carmen Helpers N. L. Wooten, G. C. Hudgins and C. W. King on the following basis:

Carman Helper N. L. Wooten—105 hours at the time and one-half rate.

Carman Helper G. C. Hudgins—33¾ hours at the time and one-half rate.

Carman Helper C. W. King—16½ hours at the time and one-half rate.

account Coach Cleaners and extra firemen being improperly assigned to perform Carmen Helpers' work on January 9, 10, 11, 13, 16; February 10, 11, 12, 13, 14, 15, 16, 21, 22, 28, and March 1, 1951.

EMPLOYEES' STATEMENT OF FACTS: The Union Terminal Company of Dallas, Texas, is a passenger train station handling only passenger car equipment for the eight proprietor railroads running in and out of this terminal, whereby three carmen helpers are regularly assigned as hose couplers to ride switch, engines and couple air hose in connection with switching cars, the three carmen helpers, hereinafter referred to as the claimants, assigned are as follows:

to use other than helpers to fill positions of helper when not on duty and to fill helper vacancies under the circumstances involved in the instant case.

It is noted the employees claim penalty rate in this case. We submit that if claim has merit, which we deny, only pro-rata-rate would be due as Awards of the Second and Third Divisions have consistently held in such circumstances, where claim is sustained, it is payable only at pro-rata rate.

The claim of the employees 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 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 waived right of appearance at hearing thereon.

The dispute presents the question, is the work of riding switch engines in the Dallas Terminal for the purpose of coupling and uncoupling air hoses in connection with switching passenger cars exclusively work of carmen helpers? If it is, then of course carrier should cease its practice of having coach cleaners, extra locomotive firemen or any other class of employees, except carmen helpers, do it. If not, then of course the practice of having them do it does not violate the carmen helpers' rights.

The work is not specifically covered by any cited rule as carmen helpers' work and, if covered, must come under the following general language of Rule 43 of the parties' controlling agreement:

"... and all other work generally recognized as carmen helpers' work. . . ."

This language is subject to the principle that carrier can continue to have work covered thereby performed in the same manner as it was customary to have it done at the time the agreement, of which the rule is a part, became effective. That is, such language does not abrogate past practices.

It appears that the work here in question has not been exclusively performed by one class of employees. In this respect apparently carmen helpers performed it all from July 6, 1948 to January 9, 1951 but that fact would not change the rule and give carmen helpers the exclusive right thereto. As written the rule permits carrier to continue its past practice of having different classes of employees do this work in connection with the switching of passenger cars. We therefore find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of July, 1952.