

Award No. 1636

Docket No. 1541

2-UT-CM-'53

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.

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the carrier improperly transferred the work of coupling and uncoupling hose in connection with switching passenger cars to other than Carman Helpers.

2. That according the Carrier be ordered to:

- a) Discontinue the assignment of other than Carman Helpers to perform this work and restore said work to Carman Helpers.
- b) Compensate Carmen Helpers W. L. Wooten, C. W. King and Louis L. Territo each in the amount of eight hours pay daily at the applicable rate, five days per week from November 16, 1951 up and until they are properly returned to service as Carmen Helpers to perform this work.

EMPLOYEES' STATEMENT OF FACTS: The Union Terminal Company of Dalls, Texas is a passenger station handling only passenger car equipment for the eight proprietor railroads running in and out of the terminal, whereby the carrier hired and assigned carmen helpers back in July 1948, to ride switch engines for the sole purpose of uncoupling and coupling air, steam and signal hose in connection with switching passenger cars, the three carmen helpers, hereinafter referred to as the claimants, were assigned as follows:

"C. W. King, seniority, 7-17-48, was regularly assigned 7:00 A. M. to 3:00 P. M., off Saturday and Sunday.

M. L. Wooten seniority 2-8-49, was regularly assigned 4:00 P. M. to 12 midnight, off Thursday and Friday.

Louis L. Territo, seniority 5-26-51, was regularly assigned as relief man working 7:00 A. M. to 3:00 P. M., Saturday and Sunday;

Employees of the carmen's craft close doors, wind up hopper bottoms and adjust loads and this Division has found in a number of awards that this work was not exclusively that of employees of the carmen's craft, but when assigned they receive the rate of their classification.

The history of coupling and uncoupling hose is that this function was not and has not been exclusively confined to, or performed by any particular craft. Referee Geo. Cheney, in an Arbitration Award, between the Brotherhood of Railroad Trainmen and certain participating carriers of the Eastern, Western and Southeastern Railroads, released August 1, 1951, in connection with the coupling and uncoupling hose question, stated:

"The evolutionary circumstances just detailed, are persuasive that from the inauguration of the air brake systems to modern times, trainmen, yardmen, and carmen have all performed the Coupling Function. From the perspective of interpretations placed upon the restrictive rules themselves by the parties, **such rules do not establish hard and fast exclusive craft boundaries as between the Brotherhood of Railroad Trainmen, and the Brotherhood of Railway Carmen, allocating the performance of the Coupling Function solely to carmen.** On the contrary, present rules portray examples of the overlapping of craft lines, and illustrations of tasks which are common to the crafts of both the Brotherhood of Railway Carmen, and the Brotherhood of Railroad Trainmen. It should also be observed that this conclusion is not original with the present Referee. The Federal District court, in the case of Shipley vs. Pittsburg and L.E.R. Company, 83 F. Supp. 722, previously reached an identical conclusion, from which significantly no appeal was taken."

As a matter of fact, prior to the agreement of March 1, 1938, and subsequent thereto, employees of various classes have been used for the function of coupling and uncoupling hose.

There have been no negotiations or agreements made on this property with the petitioners governing the class of employees that has exclusive rights to perform the work of coupling and uncoupling air and steam hose nor the rate of pay therefor, and when the agreement of March 1, 1938 was revised, there is nothing of record that the employees requested this work be included in Rules 42 and 43 and the agreement as signed does not so provide.

For the Board to sustain petitioner's claim, the organization must produce evidence of a rule governing the work involved. This the employees cannot do, and your Board has ruled in Awards 1333 and 1554, that the rules in effect on this carrier do not cover the work involved, and it is not the function of this Board to write a new rule nor change existing rules.

In the event the Board, notwithstanding the evidence produced by the carrier and awards of this Board, determines that the claim in this docket should be sustained, the carrier, without prejudice to or in any manner waiving its position as to the merits of this claim, contends that any amount awarded claimants should be less any earnings from other employment and less appropriate taxes and amounts paid under the Railroad Unemployment Insurance Act to the claimants which the carrier is obliged by law to return to the Railroad Retirement Board.

The claim of the employees is 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 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.

The carrier operates a passenger station at Dallas, Texas, and handles only passenger equipment for the eight railroads running in and out of the terminal. In July 1948, carrier assigned three carmen helpers to ride its switch engines for the sole purpose of coupling and uncoupling air, steam and signal hose in connection with switching of passenger cars. On November 16, 1951, the carrier abolished the three carmen helper positions occupied by these claimants and assigned the work of coupling and uncoupling of air, steam, and signal hose to switchmen. It is the contention of the organization that this work belongs to carmen helpers and asks that we so hold and direct that reparations be paid.

The work in question is not specifically covered by any cited rule as carmen helpers' work unless it comes within that part of Rule 43 providing,

“and all other work generally recognized as carmen helpers' work.”

We have said several times that the coupling and uncoupling of air hose may be performed by more than one craft. It is recognized as carmen's work when performed in connection with their regular duties of inspection and repairs. Here the work was done in connection with switching operations and the carrier could, if it saw fit, assign the work to switchmen. Award 1554, disposing of an identical dispute on this same property, affords adequate reason for a denial award. See also Awards 32, 1333, 1626, 1627.

It is argued that the assignment of carmen helpers to do the work for a period of time has the effect of making it the exclusive work of carmen helpers. There is no merit in this contention where it appears, as here, that the work has not been exclusively performed by one class of employees. See Awards 1333, 1554.

It is argued also that the 40-hour week agreement which became effective on September 1, 1949, had the effect of assigning the work in question exclusively to carmen helpers. This has no merit. The 40-hour week agreement did not purport to change craft lines, scope rules, or existing interpretations. It provided for changing of assignments to bring the 40-hour work week into being. It cannot be said to have frozen existing assignments as is here contended. It is noteworthy that Award 1554 was adopted after the advent of the 40-hour work week agreement and the latter is not therein mentioned.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1953.