Award No. 1823
Docket No. 1618
2-SP(T&NO)-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas & New Orleans Railroad Company)

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement since September 1, 1951, the Carrier unjustly terminated the service rights of twenty-six carmen helpers when the positions of twenty-six air hose cutters, air hose couplers and bleeders were abolished in the Houston Train Terminals and the work of coupling and uncoupling of air hose and bleeding off cars in switch drags was transferred to Train Yard Switchmen on September 1, 1951.

That accordingly the Carrier be ordered to restore the positions of air hose cutters, couplers and car bleeders to carmen helpers, and compensate the carmen helpers for all time lost by any of them account of the transfer of carmen helpers' work to the train yard switchmen, retroactive to September 1, 1951.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1951, the carrier maintained for many years at the Houston Terminals a force of thirty-five carmen helpers to work with the switch crews to perform the work of cutting and coupling air, steam and signal hose between cars and bleeding off air brakes on cars handled in switching operations by the switch crews and under the direction of the switch engine foremen and yardmasters.

The reason the carrier assigned carmen helpers with the switch crews to perform the work of cutting and coupling air hose and bleeding off air brakes on cars handled in switching operations by the switch crews, was because there was a dispute between the Brotherhood of Railway Trainmen's Organization and the carrier, where the carrier was requiring the yard switch crew to perform the work of coupling, uncoupling and bleeding off cars handled in switching operations in the terminals where carmen were employed. This dispute was filed with the National Railroad Adjustment Board, First Division, and Award No. 2210 was rendered by that Board that under the trainmen's agreement the yard switch crews could not be required to perform the work of coupling, uncoupling and bleeding off cars in switching operations where carmen were employed.

resumed their historical function of coupling and uncoupling air hose in connection with their work, carmen helpers were no longer required to follow yard engines to only couple and uncouple air hose for the yardmen. Certain jobs were discontinued and it followed that certain carmen helpers were laid off in the reduction of forces; but all of this was done in full conformity with the provisions of the agreement and not "unjustly" as charged by the organization.

Wherefore, premises considered, the carrier respectfully urges that the claim be in all things 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 dispute involves work of coupling and uncoupling air hose and bleeding off cars in connection with switching in the Houston Terminal. Beginning with September 1, 1951, carrier caused most of this work to be performed by Train Yard Switchmen in connection with their switching operations. As a result of this change 26 carmen helpers were let off in a reduction of forces. It is for the purpose of requiring this work to be restored to carmen helpers and seeing that those who were let off are compensated for all time lost by reason thereof that this claim is made, it being the contention of the Carmen of System Federation No. 162 that carmen helpers had, and have, the exclusive right thereto.

Traditionally, based on custom and practice over the years, it would appear that on this carrier, as well as in the railroad industry generally, the performance of the coupling function in connection with switching and the transfer of cars was not exclusively confined to or performed by any one class or craft of employes. The work of coupling and uncoupling air, steam and signal hose has always been work of various classes or crafts of employes to be performed by such classes or crafts in connection with their principal work, or as assigned.

The language of the Classification of Work Rule 119 of the parties' agreement relating to carmen helpers' work does not specifically cover it but, insofar as here applicable, provides:

> "* * * all other work generally recognized as carmen helpers' work, * * *."

The foregoing language of Rule 119 would not give the carmen helpers the exclusive right thereto for, as stated in Award 1554 of this Division:

> "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."

By letter agreement dated May 1, 1939, the parties interpreted Rule 119 of their agreement effective March 16, 1929, to the effect that:

> "* * * carmen helpers may be used to couple and uncouple air, steam and signal hose, bleed cars and perform other similar unskilled work of that character, * * *."

Just what brought about the necessity for this interpretation is not entirely clear. The organization says it was the result of Award 2210 of the First Division which interpreted the agreement of the carrier with its yardmen to restrict carrier from having them do this work when switching in stations or terminals where carmen were on duty. On the other hand carrier says it was due to the fact that several awards on other carriers were rendered holding carmen helpers could not rightfully be used to do such work. Regardless of what originally brought it about it was extended by the Memorandum of Agreement effective March 1, 1943, wherein, as to Rule 119, it is provided:

> "It is understood that carmen helpers may continue to be used to couple and uncouple air, steam and signal hose."

The language of both the Interpretation and Memorandum of Agreement are permissive, not mandatory. Wo do not think they gave carmen helpers the exclusive right to perform the work. This is fully evidenced by the following from the letter of interpretation dated May 1, 1939:

> "This interpretation conforms to the existing practice and is agreed to for the purpose of clarifying the rule."

Nor does the fact that carmen helpers performed this work in the Houston Terminal from October 1937 to August 31, 1951 give them the exclusive right thereto. As stated in Award 1554 of this Division:

> "* * * that fact would not change the rule and give carmen helpers the exclusive right thereto."

Practice alone does not abrogate the rules of an agreement. See Award 1636 of this Division.

After Award 2210 of the First Division was announced on September 20, 1937, carrier could not thereafter rightfully use yardmen to perform this work while switching in stations or terminals where carmen were on duty within yard limits as long as the rule on which this award was based remained in force and effect. Likewise, as long as this restriction on the use of yardmen for this purpose remained in effect carrier could not rightfully do what it did here, even though the carmen helpers did not have the exclusive right thereto. The question then arises, was this restriction on carrier's right to have yard switchmen do this work ever terminated?

Carrier, and the organization representing its yardmen, were parties to an agreement signed at Washington, D. C., on May 25, 1951, providing for the appointment of a referee to make a final and binding decision on the dispute between the parties to that agreement in respect to the coupling and uncoupling air, signal and steam hose. The referee appointed by the President of the United States for that purpose released his decision and award on August 1, 1951. This award, in respect to this dispute, insofar as here material, provided that:

> "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions on yardmen performing such work* * *."

It then provided:

> "Individual carriers may elect to accept this rule or retain their present rules or practices without modifications, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date."

Carrier notified the organization of its acceptance of the new rule on August 13, 1951. The new rule had the effect of lifting the restriction imposed upon carrier by Award 2210 of the First Division. With the effective date of the new rule carrier was free to have its yard switchmen in the Houston Terminal do the work here complained of.

On August 28, 1952, carrier entered into an agreement with the Brotherhood of Railroad Trainmen, effective December 1, 1951, wherein it is provided carrier shall pay each member of a yard crew an arbitrary allowance of 95 cents when, on one or more occasions during their tour of duty any member of the crew is, except in the specific cases therein enumerated, required to couple or uncouple air, signal and steam hose. This does not restrict carrier's right to have yardmen do this work. It only provides for the amount of payment in case they are so used.

In view of the foregoing we 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 30th day of July, 1954.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1823

The claimants in this dispute are carmen helpers subject to the agreement negotiated by the statutory representatives of this carrier and the statutory representatives of the employes within the scope of the carmen's craft.

The majority on the Second Division correctly found that "This dispute involves work of coupling and uncoupling air hose and bleeding off cars in connection with switching in the Houston Terminal . . ." The further finding that ". . . carmen helpers performed this work in the Houston Terminal from October 1937 to August 31, 1951 . . ." refutes the finding that ". . . based on custom and practice over the years, it would appear that on this carrier . . . the performance of the coupling function in connection with switching and the transfer of cars was not exclusively confined to or performed by any one class or craft of employes. . ." Furthermore, when the March 16, 1929 agreement was revised on March 1, 1943 by System Federation No. 162 and the Texas and New Orleans Railroad Company the management requested that the practice of carmen helpers performing the work of coupling and uncoupling air hose, steam and signal hose and bleeding cars handled in switching operations be continued, and a Memorandum of Agreement to Rule 119 was agreed to as follows:

> "It is understood that carmen helpers may continue to couple air, steam and signal hose."

In reference to the majority's finding that the language of the Memorandum was permissive, not mandatory, we wish to point out that the term "may" not only implies permission but also sanction—which in turn means authorization.

The Memorandum of Agreement to Rule 119 was negotiated by the statutory representatives of the parties to the controlling agreement and was therefore binding until changed in accordance with the requirements of Section 6 of the Railway Labor Act. In spite of this statutory requirement

the majority upheld the unilateral action of the carrier whereby it abolished the assignments of the carmen helpers and transferred the work formerly done by them to trainmen and yardmen. Thus work contractually belonging to a particular class of employes was assigned to an entirely different class of employes under another agreement without any negotiation between the respective representatives of the claimants and the carrier.

As justification for their finding that the language of Rule 119 did not give the carmen helpers the exclusive right to the work involved, the majority cites Second Division Award No. 1554. If the majority found it necessary to follow an award of the Second Division it should have followed Award No. 1406 wherein it was found, in a similar factual situation, that the carrier had unjustly terminated the service rights of claimants in violation of their agreement.

The majority uses an agreement the carrier entered into with the Brotherhood of Railroad Trainmen to justify finding the instant claim to be without merit. Any provision that may appear in that agreement cannot in any manner control the agreement here involved. (See Second Division Award No. 1403).

The award of the majority is erroneous. Under the agreement controlling in the instant case the claim of the employes should have been sustained.

Charles E. Goodlin,
R. W. Blake,
T. E. Losey,
Edward W. Wiesner,
George Wright.