Award No. 1834
Docket No. 1710
2-AT&SF-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That on and subsequent to July 10, 1953, the Carrier improperly withdrew four cents (4c) per hour increase paid certain of its Freight Carmen Class "B" Mechanics effective June 1, 1953; and that from and after June 1, 1953, the Carrier improperly withheld from others of its Freight Carmen Class "B" Mechanics four cents (4c) per hour wage increase; both under the terms of the agreement made in National Mediation Board Case No. A-4061, signed June 4, 1953, and effective June 1, 1953.

2. That the Carrier should be ordered to comply with the agreement dated June 4, 1953, by increasing the basic hourly rates of its Freight Carmen Class "B" Mechanics in the amount of four cents per hour effective June 1, 1953.

EMPLOYES' STATEMENT OF FACTS: The Brotherhood Railway Carmen of America entered into an agreement under date of June 4, 1953, in settlement of dispute docketed by the National Mediation Board as Case No. A-4061. That agreement was signed by the Eastern Carriers' Conference Committee, the Southeastern Carriers' Conference Committee, and the Western Carriers' Conference Committee. The Western Carriers' Conference Committee signed as representing, among other carriers, The Atchison, Topeka and Santa Fe Railway; the Gulf, Colorado and Santa Fe Railway; and the Panhandle and Santa Fe Railway. The authorization under which the Western Carriers' Conference Committee signed the agreement was specifically stated to be co-extensive with the provisions of current schedule agreements applicable to the employes represented by the Brotherhood Railway Carmen of America. The notification of that authorization given the Brotherhood Railway Carmen by the three carriers in The Atchison, Topeka and Santa Fe System states without limitation that the Western Carriers' Conference Committee has been authorized to represent them in handling the "request

class Mechanics, additional vacancies which are to be filled and/or new positions of first-class Mechanics will be filled in the following order of precedence:

(1) By qualified mechanics;

(2) By Class "B" Mechanics;

(3) By Regular apprentices in the last year of their apprenticeship;

(4) By helper apprentices in the last year of their apprenticeship;

(5) By helpers with two or more years seniority as such."

Section (e). Class 'B' Mechanics and others advanced to positions of first-class mechanics under Section (d) hereof will be paid mechanics' rate prescribed by the general agreement. Regular and helper apprentices will not establish seniority as mechanics, when so advanced. This temporary service as mechanics will be considered equivalent to an equal number of hours of service on apprenticeship and when completing the requisite number of hours of service called for by their indenture, they will be given mechanics' seniority in accordance with Item No. 11, Appendix 'B'."

In conclusion, the carrier respectfully reasserts that the claim of the employes in the instant dispute is not supported by either the mediation agreement in NMB Case A-4061 or the general agreement, effective August 1, 1945, and should, for the reasons previously expressed herein, be either dismissed or denied in its entirety.

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.

On June 4, 1953, the railroads represented by the Eastern, Western and Southeastern Conference Committees entered into a wage increase agreement with the Brotherhood Railway Carmen of America. The question for determination in this dispute is whether employes designated as Class "B" Mechanics in the Carmen's schedule agreement and Section (m) of Appendix "A" thereto, are entitled to the wage increase provided for in the wage increase agreement heretofore mentioned and specifically described as Mediation Agreement A-4061.

Carrier contends first that the case should be dismissed because it was not handled on the property as provided by Rule 33, current agreement. That rule provides that a case shall first be handled with the foreman, and if not satisfactorily adjusted, it may be appealed to higher officers in the manner therein provided. The present case was handled with the assistant to the vice president in the first instance. Assuming but not deciding that this claim is within the provisions of Rule 33, carrier is not in position to complain of the method of handling. The carrier may, of course, insist upon compliance with rules relating to the handling of claims on the property. But it may also waive strict compliance by proceeding to handle the claim without objecting to the manner of handling. In the present case, the carrier

proceeded to dispose of the claim by a letter dated September 2, 1953, in which no objection was raised as to this manner of handling on the property. The rule is that when a carrier undertakes to consider and dispose of a claim without objecting to the manner of handling on the property, it will be deemed to have waived its right to object thereafter. It is true that objection to the method of handling on the property was made in subsequent correspondence, but these objections came too late as to procedural deviations which had already been waived.

This dispute grows out of the meaning to be given to the wage increase agreement of June 4, 1953. The agreement resulted from the demands of the Brotherhood Railway Carmen of America that freight carmen be paid rates equivalent to those paid passenger carmen. The particular provision giving rise to the dispute is:

> "Effective June 1, 1953, basic hourly rates of pay for freight carmen covered by this agreement will be increased in the amount of four cents per hour applied so as to give effect to this increase in pay irrespective of the method of payment."

The precise question to be determined is whether or not a class of employes designated in the Carmen's Schedule Agreement as Class "B" Mechanics is entitled to the increase of four cents per hour under the foregoing provision:

Carmen's work is specifically set out in the Carmen's Classification of Work Rule (Rule 102, current agreement) as follows:

> "Carmen's work shall consist of building, maintaining, dismantling for repairs (except all-wood freight train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as Bridge and Building Department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks, building, repairing, and removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work, painting, varnishing, surfacing, decorating, lettering, cutting of stencils, and removing paint (the latter when not done by helpers and not including use of sand blast machine or at paint removing vats); all other work generally recognized as painters' work under the supervision of the Locomotive and Car Departments, except the application of blackening to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work."

The work of Class "B" Mechanics is defined in Section (m) of Appendix "A" to General Agreement effective August 1, 1945, as follows:

> "Class 'B' Mechanics' work shall consist of freight car truck, draft rigging, brake beam and coupler work, as well as the painting of freight cars."

It will be noted that employes under the Carmen's Agreement are divided into three general classes; carmen, carmen helpers and apprentices. Specific differentials in pay are allowed to both carmen and carmen helpers for doing certain types of work within their respective classes.

In the Carmen's Agreement effective August 22, 1922, as revised July 1, 1937, the work heretofore defined as Class "B" Mechanics' work was assigned to Carmen Helpers in very similar language. Rule 119 (c). Under that agreement the work belonged to Carmen Helpers. In the agreement of August 1, 1945, Section (c) of Rule 119 was deleted and no similar language was incorporated in the Carmen Helpers' Classification of Work Rule, Rule 104, current agreement. In Appendix "A," herein referred to, the work became that of Class "B" Mechanics as we have set forth.

It seems to us that the work of Class "B" Mechanics falls within the Carmen's classification of Work Rule. Rule 102. It is plain to us, also, that a mechanic in the Car Department is a carman as those terms are usually employed. It would seem logical to say, therefore, that either a Class "A" Mechanic or a Class "B" Mechanic in the Car Department was a carman as that term is generally used. We think the deletion of the work now described as Class "B" Mechanics' work from the Carmen Helpers' Classification of Work Rule as it was written into the 1937 agreement and the reclassification of it as Class "B" Mechanics' work in Appendix "A" to the current agreement, had the effect of changing it from a highly graded class of carmen's helpers' work with an augmented differential in pay, to a lower graded class of carmen's work with a lesser rate of pay. In other words, the work in question was taken from differential helpers and given to second class carmen. If this was not the intent of the parties in making the noted changes in the schedule rules, it does not appear that it would have had any particular purpose at all. We necessarily conclude that the work of a Class "B" Mechanic in the Car Department comes within the general meaning of the term "freight carmen" as used in the wage increase agreement of June 4, 1953.

Carrier takes the position that the parties to the wage increase agreement never intended to deal with anything other than the freight carmen's rate and cite the notice served in support of that contention. We submit that if the negotiations were intended to deal only with the rates of pay of "journeymen freight carmen" there would have been no reason to add "car painters, car inspectors, and all other car department journeymen mechanics." Carrier also argues that the use of the words in the notice, to-wit: "to the extent necessary to establish a single, uniform, standard rate at the present level of the rate paid journeymen passenger carmen" indicates that the wage increase was to apply only to journeymen freight carmen. We think this language was used to indicate a single, uniform, standard rate as between passenger and freight carmen in accordance with the expressed purpose of removing inequalities in pay of long standing between passenger and freight carmen. We think that the intention expressed by the notice was to establish a single, uniform, standard rate for passenger and freight carmen without disturbing existing differentials within the freight carmen's class. While it is true that Class "B" Mechanics had a limited classification of work rule and a lesser rate of pay because thereof, we find nothing to indicate that the four cent increase was not to apply to their basic rate of pay. The agreement indicates a clear intent to place all carmen, freight or passenger, on the same basic level without disturbing existing differentials within their own groups.

The work performed by Class "B" Mechanics is not that of a carman helper or an apprentice within the meaning of the current Carmen's Agreement. It necessarily follows that they fall within the general qualification of freight carmen covered by the wage increase agreement.

The position assumed by the carrier is a very technical one and, in our opinion, was not within the intent of the parties when the wage increase agreement was written. As we have noted, the motivating purpose of the negotiations resulting in the wage increase agreement was to eliminate the inequalities between freight and passenger carmen. It would hardly seem probable that the agreement would be made to apply to only one class of carmen where more than one class existed. The use of the term "basic hourly rates of pay for freight carmen covered by this agreement"

clearly indicates that the parties had more than one basic rated class of employes in mind. The language of the term "basic hourly rates of pay for freight carmen" was selected, we think, to preserve existing differentials existing among freight carmen covered by the agreement. The parties were not concerned with the actual basic rates paid to freight carmen on the different railroads. Their concern was to provide a formula for payment of the increase that would preserve existing differentials on all railroads. The purpose of the wage increase agreement was to increase the basic rates of pay of all freight carmen by four cents per hour and thereby satisfy the demand that freight and passenger carmen be paid equivalent rates. We think the agreement so construed is consistent with the overall intent of the parties. The agreement grants an increase of four cents per hour to the basic hourly rate of pay for all freight carmen covered by the agreement. *This being true, the claim is valid for the reasons herein stated.*

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1954.

DISSENT OF THE CARRIER MEMBERS TO AWARD 1834

This dispute grows out of the meaning to be given to the wage increase agreement of June 4, 1953. The agreement resulted from the demands of the Brotherhood of Railway Carmen of America that freight carmen be paid rates equivalent to those paid passenger carmen. The particular provision giving rise to the dispute is:

> "Effective June 1, 1953, basic hourly rates of pay for freight carmen covered by this agreement will be increased in the amount of four cents per hour applied so as to give effect to this increase in pay irrespective of the method of payment."

The parties involved disposed of the wage issue on the following basis:

Article I—Wage Increase—of the Agreement of June 4, 1953 (Mediation Agreement No. A-4061), between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and their employes represented by the Brotherhood of Railway Carmen of America, applies only to **"basic hourly rates of pay for freight carmen who are paid the freight carmen's rate."**

The majority erred when they concluded that Class "B" Mechanic was a freight carman. They disregarded Appendix "A" to the General Agreement effective August 1, 1945. Such appendix definitely set out "B" mechanics as a separate and distinct classification with separate and distinct and limited work to be performed by these employes as per Sections (a), (b), (c), and (m) of that agreement.

The agreement of 1937 designated these employes as differential helpers. Section (a) of Appendix "A" perpetuated such class of employes to the extent indicated in the appendix and classified them as Class "B" Mechanics. In