Award No. 1861
Docket No. 1681
2-MP-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreements the Carrier improperly compensated Carmen Helpers Luther Cole and W. C. Johnson for their services while assigned to work in the place of Freight Car Truckmen and Oilers Lloyd Williams and C. L. Pickens beginning on November 1, 1951.

2. That accordingly the Carrier be ordered to:

a) Compensate Carman Helper Luther Cole the difference between the rate he received and the Car Truckmen and Oilers' rate for his services while working in the place of Freight Car Truckman and Oiler Lloyd Williams on November 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 and 12, 1951.

b) Compensate Carman Helper W. C. Johnson the difference between the rate he received and the Car Truckmen and Oilers' rate for his services while working in the place of Freight Carman Truckman and Oiler C. L. Pickens on and subsequent to November 1, 1951.

EMPLOYES' STATEMENT OF FACTS: That at Alexandria the carrier regularly employed Lloyd Williams and C. L. Pickens in the classification of "Freight Car truckmen and oilers" and at seven cents (7¢) per hour higher than the hourly rate of pay of carmen helpers.

Carman Helper Luther Cole, hereinafter referred to as the claimant, was assigned by the carrier to work in the place of Truckman Oiler Lloyd Williams during his annual established vacation of ten days, commencing on Thursday, November 1, and ending on Monday, November 12, 1951, but for which service the carrier declined to pay this claimant only the helper's rate instead of the higher rate of Oiler Williams.

Carman Helper W. C. Johnson, hereinafter referred to as the claimant, was assigned by the carrier to work in the place of Truckman Oiler C. L.

Your Board will, of course, quickly recognize that Rule 11 is a general provision of the basic agreement, while Paragraph 11 of Decision SC-88-1 is a special agreement dealing with a specific matter, and under all of the well known rules of contract interpretation a general provision of an agreement must give way to a special agreement governing a specific matter wherever they are in conflict. Now it cannot be disputed that Decision SC-88-1 is a special agreement designed to govern a specific problem, and that Paragraph 11 thereof is clearly in conflict with General Rule 11 of the basic agreement. Neither can it be disputed that this fact was fully recognized by the negotiating parties for they took care to write into the special agreement (Decision SC-88-1) the language contained in Paragraph 12 which clearly states that—

> "12.(a) This agreement shall become effective July 1, 1942 and while in effect supersedes any conflicting provisions of the agreement effective July 1, 1936."

Furthermore, Rule 118 of the basic agreement was revised to include in the work that carmen helpers may be required to perform, the duties here in dispute, i. e.:

> "Car oilers and packers; applying and removing brasses on cars; . . ."

which is the work involved in this dispute now being performed all over the railroad by carmen helpers who are paid the carman helper rate.

It was, therefore, the purpose of the parties at the time Decision SC-88-1 was negotiated to "build a fence" around truckmen and oilers to preserve to them the restricted work which they have been doing since 1913 and to preserve to the individual employe of that classification the differential rate of pay now seven (7) cents per hour in excess of the rate paid carmen helpers.

The employes will admit that when a truckman and oiler assigned to the repair track goes on vacation, or is absent from duty account of illness or while laying off for personal reasons, his duties, which are restricted to repair work below the sills, are performed by journeymen carmen for which they are paid the rate applicable to freight carmen. Then when the truckman and oiler returns to duty, he resumes as before. The same situation exists in regard to truckmen and oilers assigned to freight car oiling in the train yards who are relieved by carmen helpers compensated at the carmen helper rate until the return of the truckman and oiler, at which time he resumes as before.

These claims are contrary to the governing provisions of the controlling agreements between the parties and should, therefore, 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 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.

Petitioning organization here contends the two claimant carmen helpers, who temporarily replaced two freight car truckmen and oilers on work performed in the train yard, should have been compensated at the truckman-

oiler rate of pay instead of being continued on the lower helper rate during such temporary replacement. The work in question is freight car oiling. These duties are included within the classifications of both truckman-oiler and carman helper.

Organization relies upon Rule 11, a general rule of the agreement, which states:

> "When an employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate, but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed."

Carrier responds the Memorandum of Agreement negotiated by the parties effective as of July 1, 1942, and designated as Decision No. SC-88-1, froze the complement of the truckman-oiler classification on the basis of the individual employes already in that classification, that the applicable rate therefore became a personalized or red circle rate, and that in consequence SC-88-1, and particularly Paragraph 11 thereof, comprises a special provision that makes the above-cited Rule 11 inapplicable to the matter at issue.

SC-88-1 provides that truckmen-oilers with the necessary qualifications, and under certain other conditions, may be advanced to mechanics. It also provides, however, that no other employes may enter the truckman-oiler category, and upon the advance to higher positions or departure from the service of present truckmen-oilers, the work to which they have been assigned shall be divided between carmen and helpers. The oiling work reverts to helpers, while all work below sills (including application of draft gears and couplers) reverts to carmen. Thus in the instant case, had the two truckmen-oilers actually resigned as of the beginning of the two periods in question, their oiling duties would have reverted to helpers under SC-88-1, and the latter would have properly performed such work at the helper rate. Moreover, helpers are not permitted under the present agreement to replace, either temporarily or permanently, truckmen-oilers performing work below sills on the repair track, for such work is covered by the carman classification.

In our judgment Paragraph 11 of SC-88-1 has created a personalized rate for truckmen-oilers—that is, a rate which accrues to the individual, rather than to the position. SC-88-1 as a whole has gone even further, for it has made truckman-oiler a personalized classification in the sense just described. Thus the parties have created a specialized situation to which Rule 11 of the agreement was not intended to apply. It follows that the claimant carmen helpers are not entitled to receive the truckman-oiler rate of pay for the periods in question.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1955.