Award No. 1863
Docket No. 1728
2-ART-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:

BROTHERHOOD RAILWAY CARMEN OF AMERICA, OPERATING THROUGH THE RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.

AMERICAN REFRIGERATOR TRANSIT COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violates the current controlling agreement of December 1, 1944, and partcularly Rules 24 and 47 thereof, by assigning the work of cutting to width and length of canvas, cotton batting and rope used in the building, repairing and maintaining freight refrigerator cars to other than Carmen.

2. In consideration of the aforesaid violation, the Carrier be ordered to:

a) Cease and desist assigning Carmen's work to other than Carmen, and:

b) Compensate Carmen equally divided among them and to be named later, in the amount of eight (8) hours per day at Carmen's rate of pay, for each day that other than Carmen perform the work since February 23, 1951.

EMPLOYES' STATEMENT OF FACTS: At St. Louis, Missouri the American Refrigerator Transit Company, hereinafter referred to as the carrier, maintains a shop where they build, repair and maintain freight refrigerator cars. In this shop the carrier has a large table or bench, with brackets at each end. The brackets hold a roll of canvas, 36 inches wide and approximately 300 feet long. The top of the table is so arranged that cutting tools or knives can be fastened thereto and adjusted to various positions to rip the canvas to the desired widths. In the operation of ripping the canvas, the employes place a roll of canvas into the rack at one end of the table and fasten the loose end of the roll to a roller in the rack at the other end of the table; the roller is then rotated by means of a hand operated crank, which draws the canvas across the table against the cutting tools and rips it to the various widths. After the canvas is ripped, it is then stretched back on the table, measured and cut to the various desired lengths ready to be applied to cars.

plete agreements were negotiated, one in 1939 and one in 1944, and at neither time was the classification of employes performing this work discussed or any change made.

In 1951 the employes requested that carmen mechanics be assigned, and their request was declined. The concurrence in this assignment at the time the agreements were negotiated, and for many years afterward, and the fact that the present dispute was permitted to lay idle for two and one-half years while the practice continued, indicates the organization's desire to obtain by a ruling of your Board a change in the classification of employes assigned to this work, which was not requested or obtained when the agreement was negotiated.

There is nothing in the controlling agreement to support the organization's request that this work should be assigned to carmen mechanics, and your Honorable Board is respectfully requested to so find.

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 juridiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Although there is a long history to this dispute, during which some changes have occurred in the surrounding factual circumstances, the controversy at present concerns whether the carrier has been in violation of the agreement by assigning to laborers in the storeroom of its St. Louis car repair shops the duties of cutting to prescribed lengths canvas and rope purchased in bulk quantities. Said laborers formerly also cut cotton batten but it appears that carrier discontinued purchase of this material in 1947 and that none has been cut or used since 1948. Petitioner contends the work in dispute belongs to carmen in accordance with agreement Rules 24 and 47.

The record discloses storeroom laborers have performed this work for approximately 50 years, they were performing it when the first agreement between the subject parties was negotiated in 1939, and they have continued to perform such work to the present time although a second and now controlling agreement was negotiated in 1944. Neither agreement expressly granted this work to carmen, although petitioner contends the duties involved fall within the general description of the 1944 scope rule. It is interesting to note that the same matter was grieved in 1941 and in the same year carrier denied organization's contention. That controversy was not progressed to this Board. The issue was raised again in 1951 and, after lying dormant on the property due to petitioner's inaction was revived early in 1954 and is now before us.

In view of this history, and in light of the contract provisions cited by petitioner, we must conclude that carrier has not been in violation of the agreement as charged. Having been cognizant of the practice in dispute since 1941, at the latest, we are entitled to assume that petitioner's failure to propose or obtain a revision of the scope rule in the 1944 agreement to expressly assign to carmen the work in question indicated organization's acceptance of existing practice in this regard. Thus in effect the Division is now being asked to amend Classification of Work Rule 47 for the purpose of assigning the disputed work to carmen. This, of course, we have no power to do.

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.