

Award No. 2360

Docket No. 2135

2-CUT-CM-'56

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. 150, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, the Carrier improperly assigned Bridge and Building employees to perform Carmen's work by repairing twenty wooden lockers on June 24, 25, 28 and 29, 1954.

2. Accordingly the Carrier be ordered to compensate Carmen A. Fuchs, eight hours for June 24, J. G. Faehr eight hours for June 25, D. E. McAllister eight hours for June 28 and A. Trumbo eight hours for June 29, 1954, at the applicable overtime rate.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a force of fifty-four (54) carmen employed on the first shift shown on the force statement, with working hours 7 A. M. to 3 P. M., one job from 8 A. M. to 4 P. M. with twenty minutes for lunch. This includes fifteen (15) regular relief assignments with five days of work and two consecutive rest days to do work on rest days of seven day assignments, three (3) five day positions with no relief, two (2) six day positions that are relieved one day, thirty-four (34) seven day positions with two consecutive rest days.

The carrier assigned bridge and building employees to make repairs to twenty wooden clothing lockers on June 24, 25, 28 and 29, 1954. These lockers are portable, as the carrier moved them from the women's locker room in the Yard Service Building located in the coach yard to the basement in the station for the repairs, a distance of approximately one mile. After the repairs were made, they were moved back to this same building. These lockers are in no sense a part of a bridge, building or structure.

Carmen A. Fuchs, J. G. Faehr, D. E. McAllister and A. Trumbo, hereinafter referred to as the claimants were available to perform this work if called on their rest days.

The agreement revised and effective September 1, 1949 is controlling.

opposition to the practice, have implied consent thereto, consequently their claim is without merit.

The present claim is without merit and should be 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.

The complaint is that on June 24, 25, 28 and 29, 1954 carrier improperly assigned to and had bridge and building employes perform the work of repairing twenty (20) wooden lockers, carmen claiming the work belonged to them under and by reason of the provisions of Rule 73 (a) of its then controlling agreement with the carrier.

The facts are that in June, 1954 carrier found it necessary to repair twenty (20) wooden lockers in the colored women's locker room in the service building in its coach yard. The lockers to be repaired were moved to the basement in the carrier's passenger station and there repaired by B&B carpenters, after which they were returned to the colored women's locker room.

Rule 73 (a), insofar as here material, provides:

"Carmen's work shall consist of * * * 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; * * *."

The foregoing language, down to the exception, would specifically include the work here involved. The question then arises, does the exception authorize the carrier to have B&B forces do this work? We think "generally recognized" bridge and building work means what the language indicates, that is, the construction, maintenance and dismantling of buildings and bridges. It would, however, also include any other work which, at the time the agreement herein became effective, was, as a matter of practice, being performed by B&B forces. See Award 1656 of this Division. Such is the situation here for the record discloses the carrier's B&B forces have, at all times since the opening of the terminal in 1933, performed this same type of work in keeping in repair some 239 wooden lockers owned by the carrier. In view of that fact we find the claim here made to be without merit and should therefore be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1956.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 2360 AND 2361.

The reasoning of the majority in the findings in Awards 2360 and 2361 is fallacious and is based in both instances upon the same error, that is, on the exception in Rule 73(a) rather than on the settled construction of the terms "all other carpenter work in shops and yards." This language was construed in principle in Dockets 1088 and 2201, Railway Board of Adjustment No. 2, to mean all carpenter work except that in connection with the erection and repair of buildings. The Second Division recognized and applied this correct interpretation of the language in Award 1656.

In Award 2360 the majority attempts to use the carrier's allegation of "practice" to support its reasoning. It has been repeatedly held by this Division, as well as the other Divisions of the Board, that even though a record shows evidence of practice, practice does not change a plain unambiguous rule—such as is Rule 73(a).

We are constrained to dissent from the instant findings and awards of the majority inasmuch as the plain language of Rule 73(a) of the controlling agreement assigns the work involved to carmen.

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