Award No. 2575
Docket No. 2296
2-GN-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, AFL (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, other than employees of the Carmen Craft were improperly used to deliver material to mechanics since June 2, 1955.

2. That accordingly the Carrier be ordered to additionally compensate Coach Cleaners, Florence E. Smith, Mary Smith, Malma Leder, Donald Sobota, Bernie Vernon, Nora Fowler, Clarence Pray, Marie Given, Mabel E. Owens, Annie Coyle, Anna Ellez, Hannah E. Hancock, Hilda Beck, Evelyn M. Hall, Lazaro Pagdilas, Otto Janke, V. Pergali, Julia Velemirovich, Del T. Ulstad, Stella Ryan, Earl Ayon, Jesse Daniel, Harry S. Rose, G. E. Hanson, Anna Pavel, Louise Homm, Jimmy M. Terada, Elma C. Smith, Marie Scott, Edith Hillyear, David Cook, Robert H. Leder, Wyvern K. Stainbrook, John Bushea, Seiji Aoki, Richard Brady and Kazuyuki Kajitsu, equally for the two positions amounting to 16 hours at the applicable overtime rate for each calendar day since the claim was instituted June 2, 1955.

EMPLOYES' STATEMENT OF FACTS: The work in dispute, is by agreement carman helpers' work as specified in Rule 86 of the current agreement, but since there are no carman helpers employed at King Street Station, no objection to coach cleaners performing the duties of "Material Distributors" has been raised by the carman's organization.

Coach cleaners have performed the duties of "Material Distributors" at the King Street Station for fifteen (15) years or more, prior to June 2, 1955.

"Material Distributors" or runner's position (as they have been called at King Street Station) have consisted of securing material and parts from the store department and delivering said material and parts to carman performing work in the King Street Yards.

ers engaged in the handling of material from point to point or to and from cars by direction of supervisor or superior, and not requiring the checking, tallying, classifying or recording of same," and it, likewise, covers "storehouse, packing room attendants, supplymen, deliverymen, countermen, oilhousemen, material handlers, store attendants, etc." It will be noted, therefore, that the scope rule of the agreement with the Brotherhood of Railway and Steamship Clerks specifically covers "deliverymen," while no such classification is found in the agreement covering mechanical department employes and as has been so often held by the various divisions of your Board, the fact that a rule may have been misapplied for a long time does not invalidate such rule and the error in application must be corrected when attention is directed to same.

This is the situation herein. Here we have a scope rule in one agreement specifically covering a classification of "deliverymen," such employe being a stores department employe, while the agreement covering the claimants herein contains no such classification; no helpers are employed to handle material distribution even within the commonly accepted definition of that term, and in making claim in behalf of coach cleaners who by no stretch of the imagination or under any rule could even be considered as "material distributors," the employes are, in fact, requesting that the work of store department deliverymen, specifically covered by the scope rule of the clerks' agreement, be performed by employes of the mechanical department when the scope rule and classification rule of the agreement covering mechanical department employes includes no classification which is in any way analogous.

In other words, the scope rule of the clerks' agreement has been violated for years at King Street by using mechanical department employes as "deliverymen" and, while it has been held on numerous occasions, that in the case of ambiguity in a rule, past practice is indicative of the intent of the parties, in the instant case no ambiguity exists. The scope rule of the clerks' agreement covers "deliverymen" and no identical or even similar classification appears in the agreement covering mechanics, their helpers and apprentices.

Further, your Board has held on numerous occasions that repeated violations do not nullify a rule, such position being set forth clearly in Award 2576 of the Third Division, wherein it is stated:

> "Where one party, with actual or constructive knowledge of his rights, stands by and offers no protest with respect to the conduct of the other, thereby reasonably inducing the latter to believe that his conduct is fully concurred in and, as a consequence, he acts on that belief over a long period of time, this Board will treat the matter as closed, insofar as it relates to past transactions. But repeated violations of an express rule by one party or acquiescence on the part of the other will not affect the interpretation or application of a rule with respect to its future operation."

See also Awards 1806, 2137, 2841, 3001, 3212, 3518, 3979, 4501, 4964 and 5125 of the same Division.

Therefore, the violation of the clerks' agreement was corrected; no rule of the mechanical department employes' agreement was violated and, hence, this claim must 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.

King Street Station in Seattle is jointly owned by this carrier and the Northern Pacific Railway. Prior to June 2, 1955 delivery of material from the store to mechanics in the yard was made by coach cleaners called runners. The use of coach cleaners instead of helpers was by agreement. Thereafter stores department employes made delivery to various points in the yard.

The carrier asserts that the change was made to conform to the universal practice on both properties whereby stores department employes make deliveries to stock piling points at repair tracks, etc. The organization accepts that practice but asserts that no stockpiles have been established. It asserts that boxes have been erected in which mechanics place requisitions, which are filled and the material delivered there by stores employes. The carrier does not state that any stockpiling is done and refers to them as distribution points.

It is one thing to have stores department "deliverymen" deliver material to bins, racks, etc. for "material distributors" to furnish to mechanics, but quite another to use them to distribute the material to mechanics at established points in the yard. That appears to be the case here and constitutes a violation of Rule 86.

No evidence has been submitted whereby we could sustain part 2 of the claim. Since we find the agreement to have been violated and since it is possible that some reparation may be due thereby, we remand part 2 for disposition by the parties.

AWARD

Claim 1 sustained.

Claim 2 remanded in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July, 1957.