

Award No. 2828
Docket No. 2869
2-P&LE, LE&E-TWUOA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA,
AFL-CIO (Railroad Division)**

**PITTSBURGH & LAKE ERIE RAILROAD COMPANY
AND
LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: A new tractor sweeper is being used at McKees Rocks, Pa. All tractor machines are run by helpers at this point.

Since a laborer was used to run this tractor, the organization is asking that Mr. J. Yost, helper, be compensated for three and one-half (3½) hours for labor doing this work on Friday, February 8, 1957.

EMPLOYES' STATEMENT OF FACTS: That the operating of tractors has always been advertised, awarded and considered as helpers work.

That since tractors have been used by the carrier two (2) agreements have been negotiated with the carrier and the operating of tractors has never been discussed as the carrier and the organization have always considered this as helpers work. The organization feels that since this issue was never discussed and that helpers always did this work that past practice in this case is as good as a rule.

That the carrier now has assigned a laborer to run this tractor.

That helpers are available for this work.

That this case arose at McKees Rocks, Pa., and is known as Case M-127.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company, covering Carmen, their Helpers and Apprentices, (Car & Locomotive Departments), a copy of which is on file with the Board and is by reference hereto, made a part of these statement of facts.

POSITION OF EMPLOYES: That since the operating of tractors has always been advertised, awarded and considered as helpers work, that this work be returned to them and not to be done by laborer's. Employees' Exhibits No. 1, 2 and 3.

"The inside hostler attendants were not cut off when the outside hostler and his helper performed work at Paragould, Arkansas, on May 10, 11 and 12.

"A statement has been made as to the number of engines dispatched or left Paragould, Arkansas, on the three days in question, but no record has been presented as to the number of engines handled during the three days. It was also stated that during the three days period, 15 hours of work was performed by employes coming within the scope of the Firemen and Oilers' agreement in supplying engines, or an average of 30 minutes per engine if only the engines dispatched were counted. In other words, the record shows that the outside hostler and his helper did not take over all of the work of the inside hostler attendants but did do part of it.

"With the above understanding this finding is that the claim of the employes is sustained as to their being wrongfully deprived of some of their work and the case is sent back to the parties to jointly work out the payments to be made to employes who should have been used.

"AWARD

"Case sustained in accordance with findings."

CONCLUSION:

The carrier has hereinbefore conclusively shown that the work for which the carmen are making claim is work which has for many, many years belonged to laborers coming under the scope of the firemen and oilers agreement and has been performed by them. Further, there is no rule in the carmen's agreement to support the claim and to sustain the claim would in reality be writing a new rule which the Board is not empowered to do.

The carrier respectfully submits the claim is without merit and should 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.

The record in Docket No. 2869 shows that a mechanical sweeper was placed in service by the carrier for the sole purpose of sweeping floors. The work performed by this mechanical sweeper had been previously performed manually by laborers.

AWARD

Claim denied as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1953.