

Award No. 3212
Docket No. 3037
2-P&LE-TWUOA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA
RAILROAD DIVISION**

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, THE

LAKE ERIE AND EASTERN RAILROAD COMPANY, THE

DISPUTE: CLAIM OF EMPLOYEES:

On July 10 and 11, 1957 J. Jakubiak, Foreman, delivered material and acted as hook-on on electric buggy. The Organization is asking eight (8) hours pay for each day for Helper C. Cencic.

On June 28, 1957, P. Petruna, Foreman, heated rivets on No. 6 track. Organization asking eight (8) hours pay for Helper C. Cencic.

On June 24, 1957, M. Johnson and J. Brenko, Foremen, delivering material and operating electric buggy. The Organization asking eight (8) hours for each of the following helpers, J. Cencic and F. West.

On June 25, 1957, C. Robertson, Foreman, loading material and clearing way for tractor. Organization asking eight (8) hours for Helper W. Palko.

On July 1, 2, 3, 1957, Wm. Bounds, Foreman, delivering material. Organization asking eight (8) hours pay for Helper N. Tresko.

On July 5, 1957, Wm. Kimbler, Foreman, delivering material. Organization asking eight (8) hours pay for Helper N. Tresko.

On July 27, 1957, C. Robertson, Foreman, welding on second track. This is carmen's work. Organization asking eight (8) hours pay for R. Tancosh, Carman.

EMPLOYES' STATEMENT OF FACTS: That on the dates mentioned above foremen performed work that belongs to helpers and carmen.

That this case was handled on the property of the carrier and is known as Case M-157.

That the carrier does advertise jobs as material carriers, hook-on and carmen. Employees' Exhibits No. 1, No. 2, and No. 3.

That the jobs of material carrier and hook-on are awarded to helpers.

That carmen jobs are awarded to carmen, and welding is a carman's job.

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), copy of which is on file with the Board and is by reference hereto made a part of these statements of facts.

POSITION OF EMPLOYES: That the work of hook-on on tractors, delivering of material or heating of rivets is work that belongs to helpers and not to foremen under the controlling agreement and practices.

That the organization does have a rule covering helpers and that this rule was violated. The rule is Rule 26 of the present agreement which reads as follows:

"RULE 26

Carmen Helpers

Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint on other than passenger cars preparatory to painting, car oilers and packers, stock keepers, (car department), operators of bolt threaders, nut tappers, drill presses, and punch and shear operators (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, and backing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, rebrassing of cars in connection with oilers duties, cleaning journals, repairing steam and air hose, assisting carmen in erecting scaffolds and all other work generally recognized as carmen's helpers' work, shall be classed as Helpers." (Emphasis added.)

The organization has shown by Exhibits No. 1, 2, and 3 that the work performed by the foremen is work that rightfully belongs to helpers and the carrier should have helpers do this work and not foremen.

an entirely different nature and what clerical work he does perform is merely incidental to the carrying on of his regular work.”

This same principle was also upheld in Award 4939 of the Third Division.

In the instant case, the supervisors were merely performing work incidental to the duties of their positions. The carrier cannot stress too strongly the fact that it is not the desire of the management to have its foremen or other supervisors perform work in violation of any of the several agreements in effect on this property. The rights accruing to employes working under these agreements are respected by the carrier, but it emphatically asserts that its obligations could not be met if it denied to its supervisors the right of performance of certain incidental work necessary in the performance of their duties, and in doing so in the instances involved in this dispute, no agreement employes were deprived of any work.

CONCLUSION

The carrier has conclusively shown that this attempt of the organization to restrict the rights of certain supervisors to perform work incidental to their positions is an effort to inject into railroad operation a status of rigidity which is not feasible. There must exist a certain amount of flexibility in railroad operation, essential to the welfare of the employes and the carrier, in order to maintain a proper employer-employee relationship and to enable each to derive the benefits to which he is entitled.

The carrier has also shown that the claims progressed herein are not valid, a fact which is supported by affidavits of foremen involved.

Awards of the National Railroad Adjustment Board have been cited in support of the carrier's position.

The carrier respectfully submits that these claims are absolutely devoid of 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.

Parties to said dispute were given due notice of hearing thereon.

The findings and award in Award No. 3211 (Docket No. 3036) control herein.

AWARD

The cause is remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1959.