

**Award No. 3221
Docket No. 3101
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

LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

G. Holfelder, apprentice, was helping on the shear in KS Shop on the following days, July 3, 5, 9, 1957.

Apprentices under their agreement cannot be used as helpers and for this reason the Organization is asking that J. Cencic, helper, be compensated eight (8) hours for July 3 and 5, 1957 and R. Bobchak, helper eight (8) hours for July 9, 1957.

EMPLOYES' STATEMENT OF FACTS: That on July 3, 5, 9, 1957, G. Holfelder an apprentice was used to replace a helper on the shear at KS Shop.

That helpers have always been assigned to work with the mechanics on the shear machine.

That these jobs have been advertised and awarded to helpers. Employees' Exhibits No. 1, 2 and 3.

That an apprentice agreement was negotiated with the carrier and nowhere in this agreement does it give the carrier the right to replace a helper with an apprentice.

That this case was processed on the property of the carrier and is known as Case M-156.

Punch and Shear Operator Helper J. V. Lemic was employed at the shear on the dates here involved and performed his work as defined in Rule 26 of the present carmen's agreement, which provides in part:

"Employees regularly assigned to help Carmen and Apprentices, * * * shall be classed as Helpers."

On the dates of the instant claim, Claimants Cencic and Bobchok were furloughed. Both men were recalled in the fall of 1957, but only Mr. Bobchok returned to work. These men contended that a helper was displaced by an apprentice. In the apprentice agreement of January 18, 1956, there is nothing that prohibits an apprentice from displacing a helper. They are prohibited from displacing a mechanic.

Regardless of the rules, the claimants were furloughed due to a reduction in force and there was a helper (J. V. Lemic) employed and used on the shear on July 3, 5 and 9, 1957.

CONCLUSION

Carrier has shown conclusively that Apprentice Holfelder was used to help on the shear as a part of his apprentice training and the organization has failed to show a violation of the "Apprentice Agreement" and has failed to present any evidence in support of the validity of the claim.

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.

In this claim it appears that Apprentice Holfelder on the dates in question worked on the punch and shear job. The union says that helper Lemic was displaced, which the company denies by showing that his time cards indicate he was so paid. The union in rebuttal states that Holfelder was used at the back of the machine with no helper present.

In the apprentice agreement it is provided, "Apprentices will not be used to displace mechanics." Rule 26 of the carmen's agreement indicates that carmen helpers will be assigned to help both carmen and apprentices.

Because the docket contains no factual showing by either company or union as to what actually happened, and whether Helper Lemic vacated his post in favor of the apprentice, we are of the opinion that the docket should be remanded for a joint check by the parties on the property as to the nature and extent of any displacement.

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AWARD

The cause is remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman

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