Award No. 3251
Docket No. 3117
2-TM-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

THE TEXAS MEXICAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Article III of the June 1, 1953 Agreement was violated when the Texas-Mexican Railway Company refused to allow Carman L. T. Reyna to displace upgraded helper, namely, J. P. Garcia.

2. That accordingly, the Texas-Mexican Railway Company be ordered to compensate Carman L. T. Reyna at the applicable pro rata rate for each day that an upgraded Carman Helper is allowed to work on the Texas-Mexican Railway, until such time as Carman Reyna is allowed to exercise his displacement rights on that property, beginning with November 25, 1957.

EMPLOYES' STATEMENT OF FACTS: Prior to November 25, 1957, the Texas-Mexican Railway Company, hereinafter referred to as the carrier, not being able to employ qualified carmen, upgraded two carmen helpers to carmen under the provisions of the agreement of June 1, 1953.

On November 25, 1957, Carman L. T. Reyna, hereinafter referred to as the claimant, a time served journeyman carman, furloughed from the Missouri Pacific Railroad at Kingsville, Texas, made application to the Texas-Mexican Railway Company for employment as a carman and asked that he be allowed to displace one of the upgraded helpers who were working as carmen. Claimant Reyna's request was denied by the carrier.

Claim was subsequently made in Claimant Reyna's behalf, as outlined in claim of employes. Copy of original claim dated January 22, 1958 is submitted herewith and identified as Exhibit A.

Rios, **who was not a four-year carman** (emphasis supplied), not having been upgraded a sufficient length of time or had served an apprenticeship to obtain such category, displaced a Texas Mexican carman, M. Herrera, who had many years' service as a carman and properly categorized as such. Mr. Reyna, in whose behalf the instant claim is made, is not an employe, has never been, has no claim on this carrier for employment thru contractual or any other rights, and in this connection, as further information, the Missouri Pacific Lines and The Texas Mexican Railway are competitors in the strictest sense of the word, have no connection with each other except at interchange points and no agreements for joint or common seniority with any organization. The division of work with the carmen's organization as described in the joint interchange service, cannot properly be called joint or common seniority as this arrangement was made to provide for a **division** of work between the two carriers. The correspondence in connection with this matter is not herein reproduced, for the reason that there is no point in burdening your Honorable Board with the voluminous correspondence, but carrier reserves the right to introduce such correspondence in substance before your Board, either thru rebuttal statement or at oral hearing, in the event the organization denies such handling. This circumstance is herein pointed out to further sustain the carrier's position.

It is the further position of the carrier, without prejudice to any other position, expressed or implied, that the employment of personnel is a managerial responsibility and is most applicable in the above styled claim when Mr. Roe was advised that the representative of the carrier had certain confidential information in connection with Mr. Reyna which did not appear to make him a desirable employe and to which Mr. Roe did not deny.

It is the position of the carrier that the above styled claim, parts 1 and 2, should be denied in their entirety. Part 1 of the claim has already been discussed and part 2 of the claim is far-fetched, without precedent, and verging on the ridiculous to expect your Honorable Board to render a decision, allowing a monetary claim to a person not in the employ of the carrier, never having been, and having no claim upon this carrier. To further sustain this position, it may be well if the organization will read Article V of the June 4 Agreement, to which claim is attached, which for convenience is herein quoted:

> "This agreement is in settlement of the dispute growing out of notices served on the carriers listed in Exhibits A, B and C on or about July 20, 1950, by the Brotherhood Railway Carmen of America and the carriers' rules change proposals of April 21, 1953, **and shall be construed as a separate agreement by and on behalf of each of said carriers and its employes * * *"** (Emphasis supplied.)

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 claim here is that Article III of the June 1, 1953 Agreement was violated when the Texas Mexican Railway Company refused to allow Carman L. T. Reyna to displace upgraded helper J. P. Garcia and for compensation which he, Mr. Reyna, has lost by reason of the refusal to grant his request.

The decisive issue in this submission is the scope of the Agreement of June 1, 1953, between the Brotherhood Railway Carmen of America and the 108 carriers, parties thereto.

Is the obligation of each carrier by the terms of Article III of the agreement to carmen, their apprentices and helpers in the employ of all carriers signatories to the agreement identical with its contractual obligation to its own employes of that craft.

If the position of the organization should be sustained, the foregoing query must be answered in the affirmative.

But the scope of the Agreement of June 1, 1953, is set forth in Article V thereof:

> "This agreement . . . shall be construed as a **separate** agreement by and on behalf of each of said carriers and **its employes** . . ." (Emphasis ours.)

Article III of the agreement then limited each carrier to its separate obligation toward its employes only.

Mr. Reyna not being an employe of the Texas Mexican Railway when he applied for employment as a carman may not invoke the provision of Article III of the June 1 Agreement in his behalf.

There is a serious question if this Broad has the authority to entertain this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3251

The decisive issue in the instant case is not the scope of the agreement of June 4, 1953, but the intent and purpose of Article III of said agreement. It is impossible to comprehend on what the majority could have based their finding that "Article III of the agreement then limited each carrier to its separate obligation toward its employes *only*." That the parties who in good faith negotiated Article III had no such thought in mind is evidenced by the fact that Article III specifically states:

"IN THE EVENT OF NOT BEING ABLE TO EMPLOY CARMEN WITH FOUR YEARS' EXPERIENCE who are of good moral character and habits, regular and helper apprentices will be advanced to carmen in accordance with their seniority. If more men are needed, HELPERS WILL BE PROMOTED. If this does not provide sufficient men to do the work, men who have had experience in the use of tools may be employed . . ."

That the carrier does not have the right to retain other than qualified carmen on carmen's work when four year carmen become available is evident from the following portion of Article III:

"They will not be retained in service as carmen when four-year carmen as described above become available."

The record shows that the carrier, not being able to employ carmen with four years' experience, promoted two helpers. The majority should have found that the carrier was likewise obligated to comply with the further terms of Article III and not retain a helper in service as a carmen after a carman with four years' experience became available.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner