

Award No. 3262

Docket No. 3087

2-CUT-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. 150, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1—That the Cincinnati Union Terminal Company violated the current agreement when on February 12, 1958 they abolished twenty-seven Carmen Helpers' jobs and assigned the work they had performed for a period of twenty-five years to Carmen mechanics.

2—That accordingly the Carrier be ordered to:

- a) Restore these Carmen Helpers' jobs.
- b) Recall these Carmen Helpers to fill the jobs.
- c) Compensate the following Carmen Helpers for all time lost:

E. I. Campbell	A. DePuccio	Bill Wilson
H. M. Kuhn	R. Bates	J. Crawford
E. Wright	J. Childress	F. Proffitt
W. E. Wise	E. B. Willis	A. Killion
J. L. Polston	B. Collins	G. Johnson
C. Kummer	G. Walters	J. Morton
M. Donlin	C. C. West	R. L. Hicks
W. H. Floyd	B. Sevy	J. H. Norman
C. T. Whitaker	E. J. Blaker	A. J. Wilburn

EMPLOYES' STATEMENT OF FACTS: Prior to February 13, 1958 The Cincinnati Union Terminal Company, hereinafter referred to as the carrier maintained a force of thirty carmen helpers, hereinafter referred to as the claimants, eight on the first shift, seven on the second shift and

The helper has never been regarded as having exclusive jurisdiction over his helping activities. A helper may, and often does, work with mechanic under his instructions in performing his work, usually performing the less complex duties of the craft.

The carmen craft comprises car inspectors, car repairmen, carmen helpers, carmen apprentices and car cleaners. Car inspecting and repairing concededly falls within the carman craft and calls for mechanic's pay. The helping and oiling falls within the carman craft but calls for helper's rate of pay.

There is nothing in our rules agreement which prevents the carman (mechanics) from performing the helping and oiling work. Rule 75 does not give the helpers the exclusive right to perform all helper's work.

As to the merits of the claim. The claim for E. I. Campbell, H. M. Kuhn, E. Wright, W. E. Wise and J. L. Polston is not a correct claim dating from February 13, 1958 to settlement of this case. The carrier has set forth in carrier's statement of facts the reason for claims not being valid.

We refer the Second Division to "Opinion and Award of the Board of Arbitration, Pennsylvania Railroad Company and United Railroad Workers Division Transport Workers Union of America, A.F. of L. and C.I.O., Arbitration 219 (Case E-22)" with Mr. Lloyd H. Bailer as Neutral Arbitrator and Chairman. The decision in the above case was that the Pennsylvania Railroad Company did not violate the agreement when car oiler positions were abolished and the work assigned to car mechanics.

The instant claim not only lacks agreement support, but the same question was presented to the Second Division and decided by Award No. 1380 without the aid of a referee. This award said that a carman helper is what the name implies "A Helper".

There are no essential differences in the claim here involved nor are there any substantial differences in the agreement rules to warrant the Second Division departing from the conclusions reached in Award 1380 or by the Board of Arbitration.

The carrier has shown that the mechanic in the carman craft has always been considered as the "Master" of his craft and our rules place no restriction on him which would prevent him from performing any work within the carman craft.

The carrier contends that it has not violated any rule of our agreement. The question before the Second Division is whether or not the carrier's action violated the rules of the agreement. The burden of proof rests on the employees to maintain their position.

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 the arbitration between The Pennsylvania Railroad Company vs United Railroad Workers Division, Transport Workers Union of America, etc., Arbitration 219 (Case No. b. 22) the employees urged distinction between "oilers" duties and those of Carmen and that they were placed in a separate and distinct class under the agreement. The facts presented a stronger case for the employees than we have here but the award held with the carrier.

In the late award of this Division (1958) No. 2959, at the bottom of page 7, it is said:

"Machinists can do all the work of the craft, and therefore since 32(a) permits a foreman to do the work of a machinist he may also do the work of a machinist's helper".

We rely upon and follow Award No. 1380, this Division, wherein the claim of the employees and the rule involved by them are identical with those found in this submission. This award was made by the Board without the interposition of a referee.

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. 3262

The majority refer to several awards in their findings but state that they are relying upon and following Award No. 1380 of this Division. Seemingly the majority do not realize that the function of the Adjustment Board is to interpret or apply the relevant rules of the governing agreement between the parties to the dispute. None of the awards cited by the majority are opposites; Award 1380 deals with points where there were no carmen helpers assigned and there was no showing in the case that the seniority rights of any carmen helpers had been invaded.

If the majority had based the instant findings on the governing agreement between the carrier and System Federation No. 150 they would have held that the carrier's assignment of the work to carmen is a violation of the claimant carmen helpers' (car oilers and packers) seniority rights acquired pursuant to Rule 22. The present award is tantamount to taking away the carmen helpers' contractual rights to such work under Rule 75. To the extent that the instant carmen helpers' work is being performed by other than carmen helpers on the carmen helpers' seniority roster the controlling agreement is being violated.

Award No. 1380, relied on and followed by the majority, is between the same parties as those involved in Award No. 2567. In the latter award

the seniority rights of furloughed carmen helpers were upheld and the findings correctly stated “. . . an organization is entitled to be protected against a gradual taking away of its contractual rights.”

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner