

**Award No. 3263**

**Docket No. 3060**

**2-L&N-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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1—That under the terms of the current agreement the rights of helpers (Oilers) to perform helpers work were unjustly destroyed and they supplanted by carmen on August 27, 1957, at Evansville, Indiana and subsequent thereto in the performance of such work.

2—That accordingly, the Carrier be ordered to restore carmen helpers to the positions and compensate those furloughed for 8 hours each day carmen performed oiler and other helpers duties subsequent to the aforesaid date.

**EMPLOYES' STATEMENT OF FACTS:** On August 20, 1957 the carrier at their Evansville (Howell) Indiana Shops posted bulletins Nos. 100, 101, 102, and 103 on the bulletin boards abolishing 32 carmen helper positions. These bulletins are submitted herewith and identified as employees' Exhibits A, A-1, A-2, and A-3. Seventeen of these employees performed oilers duties. See Exhibits A and A-1.

On August 22, 1957 the carrier posted bulletin No. 106 notifying six carmen helpers that they would be laid off at quitting time of shifts starting August 27, 1957. A copy of that notice is submitted herewith and identified as Exhibit B. Beginning at the start of the day on August 27, all of the positions formerly held by the aforementioned employees were assigned to carmen, including the oiling, packing, as well as brassing of cars in Evansville train yards and shops.

This dispute has been handled with the carrier up to and including the highest officer designated by the company to handle such disputes, without the desired results being obtained.

**L&N Rule 106****"Carman 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, supply and tool room attendants (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 and side sets, using backing hammers and sledges in assisting carmen in straightening metal parts of cars, rebrassing of cars in connection with oiler's duties, cleaning journals, repairing steam and air hose, assisting carmen in erecting scaffolds, and all other work generally recognized as carmen helpers' work, shall be classed as helpers."

**P&LE Rule 28****"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 helper's work, shall be classed as helpers."

In its interpretation of P&LE Rule 28 (which is practically identical to L&N Rule 106), it was the findings of the Second Division, National Railroad Adjustment Board that the P&LE Railroad Company and The Lake Erie Eastern Railroad Company had not violated the agreement in assigning the work of "oiling and packing" to carmen.

Carrier asserts that employees have recognized the established practice in effect on its property—at certain locations—for many years of having carmen perform the work of car oiling and other helpers' duties; and thus, by their acquiescence without protest, acknowledge that mechanics may perform any of the duties assigned to helpers. In these circumstances, there is no merit to the claim and it should, therefore, 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 employee or employees involved in this dispute are respectively carrier and employee 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.

We follow Awards Nos. 1380, 2621, 2959, 3261, and Arbitration Case (No. E-22) The Pennsylvania Railroad Company vs. United Railroad Workers Division, Transport Workers Union of America, AFL-CIO.

#### 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. 3263

The awards the majority have followed do not involve the agreement governing in the instant case and therefore are not in point. As stated in our dissent to Award No. 3261 the majority seemingly do not realize that the function of this Board is to interpret or apply the relevant rules of the governing agreement between the parties to the dispute. If the majority had based their findings on the agreement between the instant carrier and System Federation No. 91 they would have held that the carrier's assignment of the instant work of carmen helpers (car oilers and packers) to carmen is a violation of the claimants' seniority rights acquired pursuant to Rule 29. The instant award is tantamount to taking away the carmen helpers' contractual rights to such work under Rule 106. To the extent that the instant carmen helpers' work is being performed by other than carmen helpers on the Evansville Seniority Roster the controlling agreement is being violated.

James B. Zink

R. W. Blake

T. E. Losey

Charles E. Goodlin

Edward W. Wiesner