Award No. 3500
Docket No. 3255
2-L&N-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the terms of the agreement the rights of carmen helpers to perform helpers work were unjustly destroyed and they supplanted by carmen on June 20, 1958 at Etowah, Tennessee 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 June 13 and 15, 1958 the carrier at their Etowah, Tennessee facilities posted Bulletins Nos. 54 and 60 on the bulletin boards in the car department. These bulletins are submitted herewith and identified as Exhibits A and B. Bulletin No. 54 abolished all carmen helper positions. As a result of Bulletin No. 60, all carmen helpers were furloughed, effective at 7 A.M. Friday, June 20 ,1958.

Subsequent to 7 A. M. Friday, June 20, 1958, carmen have been assigned to perform all carmen helpers' duties at Etowah, Tennessee and have continued to perform such carmen helpers' duties until the present.

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

The agreement effective September 1, 1943, as amended, is controlling.

POSITION OF EMPLOYES: It is submitted that under the terms of Rule 106, reading, in part—

> "Employes regularly assigned to * * * (duties of) * * * 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 attend-

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."

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 employes 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.

The situation involved here is the same as that before the Division covered by Docket No. 3060 L&N-CM.

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.

The parties to said dispute waived right of appearance at hearing thereon.

Award 3263 governs in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1960.

DISSENT OF LABOR MEMBERS TO AWARDS 3495 to 3507, inclusive

We agree that Award 3263 arose under the instant agreement between the same parties as here involved, however, as pointed out in the dissent to Award 3263 the awards there followed did not involve the governing agreement and therefore were not in point. The Arbitration Case cited (The Pennsylvania Railroad Company vs. United Railroad Workers Division, Transport Workers Union of America, AFL-CIO) was determined by the author of the instant award and, while it may be flattering to the author to have it cited, it likewise had no bearing on the dispute involved in Award 3263.

Rule 26(a) of the controlling agreement prescribes that "When it becomes necessary to reduce expenses, the force at any point or in any department shall be reduced, seniority as per Rule 29 to govern * * *." If the carrier desired to make a change in this agreement rule it should have served notice showing the proposed change and handled same in accordance with the requirements of the Railway Labor Act, but the carrier did not observe the right of the representatives of the whole unit to be notified and dealt with concerning a matter which not only destroys rights of the instant claimants but may provide a leverage for taking away other advantages of the collective agreement. (Order of Railroad Telegraphers v. Railway Express Agency, 64 Sup. Court Rep. 582).

We realize that it takes very little time and no effort to simply state that a previous award governs, however the purpose of calling in a neutral is to have each case decided on its merits under the governing agreement. An award of this Board that ignores the collective bargaining agreement between the parties to any dispute is not valid regardless of the number of previous awards cited. The agreement requires that the claimants be made whole. To not do so makes a mockery of the collective bargaining processes under the Railway Labor Act.

/s/ Edward W. Wiesner
Edward W. Wiesner

/s/ R. W. Blake
R. W. Blake

/s/ Charles E. Goodlin
Charles E. Goodlin

/s/ T. E. Losey
T. E. Losey

/s/ James B. Zink
James B. Zink