Award No. 3603
Docket No. 3379
2-CofG-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated the controlling agreement when it furloughed Carmen Helpers on March 13, 1958 and assigned holding on rivets (bucking rivets) to Carmen mechanics at Macon, Georgia from that date on.

2. That the Carrier be ordered to desist from assigning Carmen mechanics to holding on rivets and return this work to carmen helpers, and

3. That the Carrier be ordered to compensate Postell Shakespeare, or the senior furloughed carman helper who may be unemployed on such days as Shakespeare may be working, for eight (8) hours at his applicable pro rata rate of pay for each and every shop working day beginning March 14, 1958, and continuing as long as this violation exists.

EMPLOYES STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, posted a bulletin on March 10, 1958, at Macon, Georgia furloughing Postell Shakespeare, hereinafter referred to as the claimant, and other employes, effective with the close of the work day March 13, 1958.

Beginning on March 14, 1958 the carrier began assigning carmen mechanics to the work of holding on rivets (bucking rivets) formerly performed by carmen helpers.

Claimant was available for this work had he not been furloughed, or had he been recalled to service.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949 as subsequently amended is controlling.

The claim is apparently for a new rule. Carrier urges that the Board does not possess the authority to write rules, and the Board has consistently so held. The Board's holdings are based on the Railway Labor Act which clearly restricts the Board's authority to deciding

> " * * * disputes between an employe or groups of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * * ."

See Section 3 First (i) of the Act.

It is well settled that the freedom of action of a carrier is restricted only by statutory enactment or by the terms of an effective agreement. The latter does not prohibit the act which is the subject of this claim nor does it require payment of the penalty demanded. There is no justification whatsoever for this carrier to be saddled with this unnecessary and unneeded position or expense. The instant claim is without any semblance of merit, and it should be denied in its entirety.

In this ex parte submission, carrier has clearly shown that the claimant is not entitled to that which the petitioners are here demanding. There is no basis or support for the claim of the employes. Carrier respectfully urges the Board to deny the claim in its entirety.

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 waived right of appearance at hearing thereon.

The organization here contends that the carrier violated the controlling agreement, particularly Rule 110—carmen helpers and Rule 29—seniority, when it furloughed Postell Shakespeare on March 13, 1958 and assigned "holding on rivets" to carmen merchanics from then on. The premise for the claim is that Rule 110 confers upon the helpers exclusive jurisdiction over the work listed therein.

This premise is false. It was the intent of the parties to this agreement that rule 110 would be regarded as permissive, not exclusive, when urged against the carmen mechanics. To that end Rule 47 permits the carrier to assign helpers, while rule 30 forbids the assignment of helpers to any work included in rule 108 (the carmen's classification of work rule) except that portion extracted from 108 and specifically listed in rule 110. This list constitutes the maximum utilization of helpers permitted by the contract.

On the property, the carrier in agreement with the carmen assigned only a portion of the listed work to helpers the remainder was retained under the jurisdiction of carmen. Hence it is obvious that rule 110 was neither intended nor utilized to confer upon helpers exclusive rights to the listed work. Moreover, rule 110 specifies only that employes in fact doing the work listed will be classed as helpers. On the other hand, rule 108 covers employes doing the

same work as an integral part of their mechanic's assignments. This relationship is expressed by the statement that carmen mechanics may do all of the work of their craft.

But the organization contended that the helpers do acquire exclusive jurisdiction over any portion of the work listed in rule 110 that the carrier has assigned to helpers as a constant practice.

Practices long continued do not operate to interpret the rule unless the practices show the intent of the parties to the agreement. In the instant dispute the practices on the property clearly show that exclusive rights were not intended. The carrier, in assigning "holding on rivets" to helpers, was exercising an option to use helpers rather than mechanics; and the exercise of this option is not a bar to the carrier later exercising its alternative right to use mechanics.

The organization also argued that work long assigned to one group of workers gives rise to a vested interest in that work which is expressed in seniority rights that support claims of the group to work generally allotted to their class.

The Board must point out that seniority acts to designate who among a class of employes has rights to work made available to that group. It is true that work long assigned to one group of employes creates a presumption that it will continue to be so. However, this presumption cannot be translated into a rule compelling such assignments where the contract holds to the contrary.

In this instance a reduction in force took place. In the course of reallocating the work of four helpers' and eight mechanics' positions that were abolished, "holding on rivets", and such other work as made up the helpers' positions, was reconstituted into various mechanics' assignments. The carrier urged its obligation of managing operations as economically and efficiently as possible as the cause for its action. The Board can take no exception to this when the action of the carrier was both legal and based upon a sound cause. With these positions legally abolished the work in dispute did not bring into play the seniority rights of the helpers.

The Board recognizes that as a consequence of the carrier's action there may be less security of employment for carmen helpers and believes that this was the central issue in this dispute. However, this is a consideration that can only be handled in negotiation, not in a claim to the Board charging contract violation.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1960.

DISSENT OF LABOR MEMBERS TO AWARD No. 3603

The majority's statement that the Board can take no exception when the

action of the carrier is both legal and based upon a sound cause discloses a misunderstanding of the function of the Board. It is the function of the Board to base its decision on the agreement governing the rates of pay, rules, or working conditions of the employes involved.

Furloughing the instant carmen helpers and assigning the work of their positions to others violated the seniority rights of the claimant carmen helpers. To state, as does the majority, that the central issue in this dispute is one that should be handled in negotiation is absurd. The carmen helpers' seniority is established in the governing agreement and cannot properly be taken away or cancelled. What the majority is attempting to do in the instant findings and award is negate the clear-cut provisions of the agreement, a matter not within the purview of the Adjustment Board. Rule 132 of the agreement between this carrier and System Federation No. 26 prescribes "Except as provided for under the special rules of each craft, the General Rules shall govern in all cases." Rule 135 specifically states "The General Rules, Special Rules, and rates of pay now in effect are to remain in force until revised in accordance with the procedure required by the Railway Labor Act," and stands as a protest against an award such as the instant one.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink