

Award No. 3617
Docket No. 3509
2-P&LE-TWUOA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA,
RAILROAD DIVISION A.F. of L.-C.I.O.**

**THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY
AND THE LAKE ERIE AND EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: On May 29, 1958, Car Inspector Dutton was used to drive a jeep. This is a violation of the agreement as this work is advertised as a helpers job and awarded to a helper. Rule 26 of the agreement was violated.

Also Car Inspector Dutton has no helpers rights and since he has no helpers rights he was not in any way entitled to do helpers work. When he was used to do helpers work Rule 39 (4) was violated.

Since Car Inspector Dutton was used to drive the jeep and first he had no helpers rights and second driving a jeep is helpers work the Organization requests that C. Amicone, Helper, who was furloughed and available for this work, be compensated eight (8) hours for May 29, 1958.

EMPLOYES' STATEMENT OF FACTS: On May 29, 1958 the Carrier did use Car Inspector Dutton to drive the jeep and this work belongs to helpers by bid and award.

C. Amicone is a helper and he was on the furlough list and was available for the work performed by Car Inspector Dutton.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company, covering Carmen, their Helpers and Apprentices (Car & Locomotive Departments), copy of which is on file with the Board and is by reference hereto made a part of these Statement of Facts.

POSITION OF EMPLOYES: That when the carrier on May 29, 1958 used Car Inspector Dutton to drive the jeep the carrier violated the agreement, Rule 26 which reads as follows:

who have been employed at or near this passenger station. The carrier states that under Rule 8 of the effective agreement it is permitted to use car inspectors to perform the lower classification work of coach cleaners if they pay the car inspectors their own rate.

There was no evidence submitted by the employes in support of their claim that the work involved is that of laborers. However, the Carrier has shown that at the Pittsburgh Station the work involved in this claim is performed by coach cleaners who come under the controlling agreement under which these claimants work.

From the evidence submitted, this Board can find no violation of the effective agreement. Therefore, this claim must be denied.

AWARD

Claim denied.”

(Rule 27, referred to above, is identical with current Rule 25 of the carmen's agreement.)

In Award 3211, this Division, involving the same parties here involved this Board held as follows concerning Rule 26:

“In this docket the Union claims that Rule 26 was violated, the rule is a Classification of Work Rule which enumerates some of the duties of a Helper and concludes with the catch-all-phrase, ‘and all other work generally recognized as Carmen's Helper's work, shall be classed as Helpers’.

This rule does not contain any language establishing that such work belongs only to Helpers. It is descriptive not exclusive.”

CONCLUSION:

The carrier has established that the work here in question has been **recognized by the employes** as work which can properly be performed by employes under the scope of the carmen's agreement without violating the agreement. Therefore, it was entirely proper and permissible under Rule 8 of the carmen's agreement to have the work performed by a car inspector.

Awards of the Second Division, National Railroad Adjustment Board, have been cited in support of the carrier's position in this case.

The carrier respectfully submits that the claim is without merit and should 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 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 Carmen classification and Carmen Helpers classification plainly were not intended to be mutually exclusive. As the name implies the purpose of the latter class is to help the former class within its field of work. Thereby certain of the unskilled duties connected with carmens' work may be assigned to lower paid employes when the amount of such work justifies the assignment.

These Helpers have seniority rights among themselves but even where they are regularly assigned we find no rule or reason to prevent the use of carmen for tasks usually performed by them, or for a tour of duty, when a Helper is not available and the carmen's rate is paid.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December 1960.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3617

The majority in Award 3617 disregards entirely the agreement between the parties in reaching its implausible conclusion. The record clearly and indisputably shows that the carrier recognized the work set out in this claim as carmen helpers' work by job advertisement and regular assignment.

The abortive action of the majority in Award 3617 has in effect removed Rule 26 from the agreement and is another step in the gradual taking away of contractual rights.

This action is beyond the jurisdictional scope of this Board and subverts the applicable provisions of the Railway Labor Act. We dissent.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink