Award No. 3643
Docket No. 3462
2-N&W-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 40, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY (Virginian Railway Company)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly assigned other than Carmen Helpers to pack and oil journal boxes on caboose cars in Elmore yards on March 27 and April 8, 1958.

2. That accordingly the Carrier be ordered to compensate Carmen Helpers J. C. Jones and W. G. Wolfe, each in the amount of two hours and forty minutes at the overtime rate of pay.

EMPLOYES' STATEMENT OF FACTS: At Elmore, West Virginia, the carrier maintains a force of some 20 carmen and some 18 helpers in the transporation yard; there are carmen and helpers in this yard around the clock, 7 days per week.

On March 27 and April 8, 1958, Mr. Forbes, car foreman, instructed Mr. R. C. Weikle, carman, to pack and oil the journal boxes on the caboose cars, the work of packing and oiling of journal boxes has for many years been performed by the carmen helpers.

Carman Helpers J. C. Jones and W. G. Wolfe, hereinafter referred to as the claimants, were off duty and available to have performed the work, had they been called.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective January 1, 1943, as subsequently amended, is controlling.

of the machinist helpers which would warrant this court in interfering with the parties' administration of their own contract."

The two cases referred to above are identical to the one now before your Board in principle. The instant case should therefore be denied. Your Board's attention is called to Awards 2959, 3261, 3262 and 3263 of the Second Division, which also sustain the carrier's position in this case.

The carrier takes the position that the performance of so-called carmen helpers' work by carmen did not and does not violate any contractual rights of the carmen helpers. We have had the same class of work which forms the basis of claim in this case performed by carmen for many years without any claims being filed therefor, which sustains the carrier's position.

The employes in this case, in effect, are asking that a new rule be written which would provide that packing and oiling journal boxes is exclusive work of carmen helpers. To sustain the employes would mean that the carrier would have to establish positions of carmen helpers to perform work that carmen have heretofore performed for many years.

In Second Division Award 1764 (Referee Carter) the question here involved was not an issue in that dispute but the following statement in the Board's findings is indicative of the generally accepted understanding that the servicing of journal boxes is not the exclusive work of carmen helpers:

> "The servicing of journal boxes by Car Inspectors or Car Helpers consists of adding free oil, adding or removing packing, adjustment or removing packing retainers and opening and closing the box lids at the beginning and ending of the servicing of each box."

It is evident from Part 1 of the employes' statement of claim that this dispute in all essential points is the same as decided by Second Division Award 1380 and by the Board of Arbitration, dated March 1, 1957, in the dispute on the Pennsylvania Railroad. There are no essential differences in the factual situation here involved, nor are there any substantial differences in the schedule agreement rules to warrant this Division to depart from the conclusions reached in Award 1380 or by the Board of Arbitration.

FINDINGS: The Second Division of the Adjustment Board, based 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 facts and applicable rules are in all essential respects the same as those involved in Award 1380, rendered by this Division without a referee, and in its Awards 3261, 3263, 3495, 3508, 3509, 3510 and 3511, and we find those awards controlling.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1961.

DISSENT OF LABOR MEMBERS TO AWARDS 3643 AND 3644

It is most unfortunate when findings are based solely on awards in disregard of the governing agreement. None of the awards cited by the majority involve the present carrier or the controlling agreement. Furthermore, they are erroneous awards — as pointed out in a dissent in each instance.

The controlling agreement between the Virginian Railway and System Federation No. 40, negotiated pursuant to the Railway Labor Act, prescribes that "These general and special rules and rates of pay effective January 1, 1943, are to remain in force until revised in accordance with the provisions of the Railway Labor Act." (See Rule 132.) Carmen's Special Rule 112 expressly states that "car oilers and packers . . . shall be classed as helpers." This being the case it is evident that car oiling and packing is carmen helpers' work. Strict adherence to the terms of the agreement is the only way in which an employe's rights can be protected. One of the most fundamental of these rights is seniority and as long as the rules of the existing agreement continue in effect it is the duty of the Board to see that the rules involving such rights are enforced.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink