

Award No. 3678
Docket No. 3490
2-D&RGW-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO. (Carmen)**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1 — Rules of the current Agreement, particularly Rules 6, 27, 97 and the established, accepted, recognized and agreed to use of coach cleaners to water passenger train cars for over thirty years, were violated when other than coach cleaners were and are used to water passenger train cars each and every day since April 24, 1958.

2 — Accordingly, you should compensate each coach cleaner named here four hours each for the following days:

J. R. Shepard, for each Saturday and Sunday
A. Larson for each Tuesday and Wednesday
A. Klunker for each Wednesday and Thursday
G. Leone for each Thursday and Friday
F. Jones for each Sunday and Monday
G. Lund for each Monday and Tuesday

of each and every week you continue to use other than coach cleaners to water passenger cars.

3 — An additional claim of four hours each and every day is also claimed for three of the above named coach cleaners beginning April 24, 1958 under the provisions of Rule 6, subject to their position on the Overtime Board and call, is made for the daily violation of controlling rules by the use of laborers to perform work of watering passenger cars at the Salt Lake City, Utah passenger depot.

EMPLOYEES' STATEMENT OF FACT: Facts of record show coach cleaners have watered passenger train cars at Salt Lake City, Utah for over thirty years. The carrier has recognized this as coach cleaners' work for over thirty years. A piece work schedule made July 15, 1927, amended March

extra hours, then a showing of public necessity would be required. The question of public interest, being contrary to contract provisions, is not here involved."

The carrier has shown that watering passenger cars is not the exclusive work of any craft on this property, that it is performed by various crafts at different points, and that it is its right and duty to regulate its affairs except insofar as it has restricted itself by agreement.

Claims must 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 claim is that the Carrier has unilaterally assigned to other than car cleaners the watering of passenger cars in the westbound and eastbound California Zephyrs, which stop at Salt Lake City fifteen and twenty minutes, respectively.

But the only evidence of the assigning of any passenger car watering to coach cleaners is the carrier's unilateral "Piece Work Schedule Covering Cleaning, Icing and Watering Passenger Train Cars," dated July 15, 1927, showing six cents as the pay for watering a car, and its unilateral revision dated March 30, 1932, showing the same rate, with a twelve cents or seventeen cents rate for the complete draining, cleaning and filling of water systems on certain cars.

The first agreement relating to it was a Memorandum of Agreement dated 9/7/40 which specified that as of 9/16/40 "the present practice of compensating coach cleaners at Burnham and Salt Lake on a piece work basis will be discontinued and thereafter all employes designated as coach cleaners on the System will be paid an hourly rate," subject to the Carrier's unilateral right to revert to the piece work basis at the end of one year.

The Agreement includes coach cleaners but does not specify their duties. Thus the only evidence of the assignment of passenger car watering to coach cleaners was by the Carrier's unilateral action and does not show that coach cleaners ever had the exclusive right to water all passenger cars.

On the contrary, the record shows that the watering of passenger cars on the system has always been performed by other crafts incidental to their other duties, and only at Salt Lake City does the evidence indicate that coach cleaners ever did passenger car watering not incidental to general coach cleaning work. Consequently, although apparently the enroute watering of the California Zephyrs had habitually been performed at Salt Lake City by coach cleaners, we cannot conclude that they have the exclusive right to perform it. Car watering incidental to general coach cleaning is not here involved.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3678

The majority's denial of the present claim is inconsistent with its holding that the enroute watering of the California Zephyrs had habitually been performed by coach cleaners at Salt Lake City. This denial award in reality upholds the carrier in unilaterally changing the working conditions of the claimants and permits the carrier to evade its statutory obligation under the Railway Labor Act, Sec. 2 First of which commands that "It shall be the duty of all carriers * * * to maintain agreements concerning rates of pay, rules, and working conditions * * *"

Edward W. Wiesner

R. W. Blake

C. E. Goodlin

T. E. Losey

James B. Zink