

Award No. 3723
Docket No. 3604
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

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

DISPUTE: CLAIM OF EMPLOYES: On August 23, 24, 25, 1958, Carmen were used in doping cars. This is a violation of Rule 26 'Carmen Helpers'. Also the Carrier does have furloughed helpers available for this work.

Since Carmen were used to dope cars on the above mentioned days the Organization requests that the Carrier compensate W. Waugh and H. Higley the difference between laborer's rate of pay and helper's rate of pay.

EMPLOYES' STATEMENT OF FACTS: This case arose at McKees Rocks, Pa., and is known as Case M-222.

That Rule 26 of the present agreement was violated when the Carrier used Carmen to dope cars when this work belongs to helpers.

That the Carrier does have furloughed helpers who are available for the work performed by Carmen.

That the Carrier does advertise car oiler and packer jobs in the shop and awards said jobs to helpers.

The Railroad Division, Transport Workers Union of America, AFL-CIO has 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 by reference hereto made a part of these Statement of Facts.

POSITION OF EMPLOYES: Rule 26 of the present agreement was violated when the carrier used carmen in the shop to dope cars as Rule 26 reads as follows:

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 shown that the work here in dispute has never been assigned exclusively to helpers and that the same identical work has been performed by carmen on this property for many years. It has also been shown by the carrier that the carmen's agreement contemplates the use of carmen on lower rated work so long as the higher rate is paid and that under Rule 8 of the agreement it was entirely proper and permissible to have this work performed by a carman.

Awards of the Second Division, National Railroad Adjustment Board, on this property and on other carriers have been cited in support of 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 substance of this claim seems to be that the employment of a less skilled employe to help a carman prohibits the carmen from performing any of the work of their craft which the helper is qualified to perform.

The same parties and agreement and like issue appeared in the claim decided in Award 3617 of this Division and we should be controlled thereby.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 29th day of March 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3723

The majority has relied on Award 3617 of this Division as controlling in Award 3723. Thus, error is compounded. By reference to our dissent to Award 3617 we apply that dissent to Award 3723.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink