

Award No. 3803
Docket No. 3293
2-CMStP&P-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr. when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreements, the Carrier improperly upgraded Carman Helper Lawrence Green at Savanna, Illinois, to perform the duties of a Carman on August 14 and 29, 1957.

2. That accordingly the Carrier be ordered to compensate Carman Merle Cate at the applicable carman's rate of pay for eight (8) hours for each of August 14 and 29, 1957.

EMPLOYEE'S STATEMENT OF FACTS: On August 14 and 29, 1957, Carman Helper Lawrence Green held a regular assigned position as such on the 12:00 Midnight to 8:00 A. M. shift Sunday through Thursday, with Friday and Saturday as rest days at Savanna, Illinois.

Car Inspector R. G. Reitz, who held a regular assignment as such on the 4:00 P. M. to 12:00 Midnight shift at Savanna, Illinois, was absent from duty on August 14, 1957.

Car Inspector O. Rogers, who held a regular assignment as such on the 12:00 Midnight to 8:00 A. M. shift at Savanna, Illinois, was absent from duty on August 29, 1957.

Carman Helper Lawrence Green was upgraded to a temporary carman on August 14 and 29, 1957, for no purpose other than to work the positions held by Car Inspectors Reitz and Rogers on the days they were absent.

Carman Merle Cate, hereinafter referred to as the claimant, was regularly assigned as a car inspector on the 12:00 Midnight to 8:00 A. M. shift

use to concern ourselves with the technical terminology of the agreements.

AWARD

Claim denied."

In conclusion we submit the following:

1. The parties to dispute have heretofore, under the 1942 Emergency Agreement and under the June 4, 1953 National Agreement, recognized the carrier's right to advance or upgrade carmen helpers to fill vacancies (temporary or permanent) on carmen positions.
2. Article III of the June 4, 1953 National Agreement does not contain the prohibitory construction which the employees now allege or seek.
3. All rights of the carrier which it has not contracted away — and it has not contracted away the right to advance or upgrade carmen helpers to fill either permanent or temporary vacancies on positions of carmen — remain with it.
4. The evidence of record clearly and decisively supports the carrier's position in the instant dispute.

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 issues presented in this docket are the same as those involved in Award No. 3802. For the reasons stated in that award this claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1961.