

Award No. 3850

Docket No. 3596

2-IC-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O.
(Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned carmen to perform carmen helpers' work.

2. That accordingly the Carrier be ordered to additionally compensate Carman Helper Lester Hale in the amount of 8 hours each day for July 14, 15, 16, 17 and 18, 1958 and Carman Helper Herbert Highland in the amount of 8 hours each day for July 21, 22, 23, 24 and 25, 1958.

EMPLOYEES' STATEMENT OF FACTS: Carmen Helpers Lester Hale and Herbert Highland are carried on the carmen helper's seniority roster at the Illinois Central Railroad, Carbondale, Illinois.

The carrier nevertheless on July 14, 15, 16, 17 and 18, and July 21, 22, 23, 24 and 25, 1958 elected to either stand by or authorize carmen to oiling and packing boxes, clearing wheels, and other work which belongs to the carmen helpers.

Carmen helpers were employed during the above dates at this point.

The claimants were furloughed during the aforesaid period, but available for service.

This dispute has been progressed with the carrier up to and with the highest officer designated thereby to handle such disputes, and consequently, he declined to adjust it.

is not germane to the present issue. Nor is the prescribed method for temporarily filling **existing** oiler positions pertinent to this controversy.

We find that the contract contains no general bar against car inspectors doing the oiling and related work here in dispute. In view of this determination, we are unable to conclude that because oiler positions have existed at particular locations, oilers have thereby acquired exclusive jurisdiction over the oiling work there performed. The Company has the right to abolish positions. The car inspectors who took over the disputed work are still performing work within the carmen's craft. We conclude, therefore, that Management has not violated the agreement as charged by the Union."

The instant case before the Board does not involve regular oilers' (carmen helpers') positions as does the above case but instead concerns approximately two hours' work per day oiling, cleaning and repacking journals on cars serviced and repaired on the car repair track. Here, too, there is no rule in the agreement preventing the assignment of such work to carmen and, here too, the carmen in performing the work were doing nothing more than performing work within the carmen's craft.

Carrier submits that it was within its rights to decide whether or not the helper was needed and within its rights to assign carmen to perform work of their craft without the assistance of a helper.

The claim is entirely 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 waived right of appearance at hearing thereon.

The Carmen's craft includes the three classes of carmen, carmen apprentices and carmen helpers, and is governed by Special Rules 126 to 146, inclusive.

Rule 126 is headed "Qualifications" and defines as a Carman "any man who has served an apprenticeship or has had four years' practical experience at carmen's work", and who can "perform the work of his craft." (Emphasis added.)

Rule 127 is the "Classification of Work" rule and specifies the work of the carmen's craft, including "maintaining * * * all passenger and freight cars," and "all other work generally recognized as Carmen's work."

Rule 128 relates to "Carmen Apprentices" and indicates that they may engage in "the work" (of the craft) "as defined in Rule 127."

Rule 129 relates to "Carmen Helpers" and states that members of the craft regularly assigned to help carmen and apprentices, or engaged in certain work, including that of car oilers, and all other work generally recognized as carmen helpers work, shall be **classed** as helpers.

Thus Rule 127 outlines the entire "classification of Work" of the craft, and Rules 126, 128 and 129 define the three classes of the craft. Rule 129 limits the work of the third class, the carman helpers, to certain items of the craft's work; but Rule 128 does not so limit the Carmen Apprentices, since they are to learn the work of the craft "as defined in Rule 127," by doing it in cooperation with fully qualified Carmen; and none of the special rules limits the Carman to any particular part of the work of his craft; on the contrary, Rule 126 defines the Carman as one who can "**perform the work of his craft,**" without imposing any limitation. Certainly car oiling is part of the craft's work of maintaining passenger and freight cars. The Employees state as follows in their Rebuttal to the Carrier's Submission:

"* * * it is a fact that there are some points where there is not sufficient helpers' work to justify the employment of helpers and helpers' work is performed by carmen. This, however, is not done because Rules 127 and 129 authorize it, but because of a so-called practical application of an agreement which has been recognized by this Division to the effect that a Carrier is not forced to employ a class of employes where the work does not justify."

It follows that the assignment of carmen helpers' work to carmen was not, as stated in the Employees' Submission, "in complete violation of Rule 129". On the contrary, as in Award 1380, the record shows long acquiescence in the performance of car oiling work by carmen. And as in that award the Rules here (Rule 17) recognize the right of an employe to perform the work of another employe receiving a lower rate providing his own rate of pay is not changed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3850

The record shows that prior and subsequent to the dates set forth in the claim carmen helpers performed the work subject of this dispute at Carbondale and also that at the time the claimant carmen helpers were on furlough carmen helpers at other locations within the scope of the Carbondale carmen helpers' seniority roster were performing car oiling and parking. The facts here clearly distinguish this case from Award No. 1380 cited by the majority.

In the present findings the primary and fundamental factor of seniority has been ignored. Using carmen to perform the Carbondale carmen helpers' work is an invasion of the latter's seniority rights and a violation of Special

Rule 129. Carmen may not perform carmen helpers' work when carmen helpers are available. The Railway Labor Act limits the Board's authority to "interpretation and application" of the agreement **as written**. Rule 129 is clear and unequivocal and cannot properly be interpreted as limiting the rights of carmen helpers possessing seniority rights to perform such work. The claimants were improperly displaced by carmen for the periods referred to and should have been compensated as claimed.

E. J. McDermott

T. E. Losey

James B. Zink

Edward W. Wiesner

C. E. Bagwell