Award No. 4110
Docket No. 3860
2-ACL-CM-'63

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. 42, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(a) That, under the controlling Agreement, Carmen Helpers (Car Oilers and Packers) listed below:

Florence, S. C.

F. Sumner	J. Scott	R. Cain
J. Perry	W. A. Wilson	C. L. Sauls
L. Battle	T. Stackley	A. Wilds
C. Myers	C. C. Pierce	A. L. Hemingway
N. Smalls	H. S. Addison	D. H. Isgett
	J. Echols	

Waycross, Georgia

U. Carter	A. E. Parson	M. C. Boatwright
Curtis Jackson	F. E. Dean	J. I. Riggins
M. McLendon	H. L. Howell	N. B. Crews
P. Q. Todd	W. E. Parker	Curtis Hill
J. A. Thrift	J. L. Smith	J. M. Williams
F. J. Mumford	J. A. Griffin	O. G. Thrift
M. Kirkland	C. G. Callahan	J. Young
R. Rozier	I. E. Booth	S. J. Jackson
	R. L. Blalock	

have been unjustly removed from service and supplanted by Carmen.

(b) That accordingly the Carrier be ordered to restore the above named Carmen Helpers (Car Oilers and Packers) to service with pay for all time lost as a result of said suspension.

EMPLOYES' STATEMENT OF FACTS: The Atlantic Coast Line Railroad Company, hereinafter referred to as the carrier, employed the above named carmen helpers (car oilers and packers), herein after referred to as the claimants, as car oilers and packers at the points as indicated below. They were furloughed in the following order:

"Florence, S. C.	August 5, 1960
Waycross, Georgia	August 9, 1960"

The work formerly performed by the affected employes has now been assigned to carmen (car inspectors).

This claim has been progressed successively on appeal, as prescribed under the controlling agreement, up to and including the highest designated officer with whom disputes are to be handled and carrier has consistently declined to make adjustment.

The agreement, effective November 11, 1960, as amended and reprinted January 1958, is controlling.

POSITION OF EMPLOYES: It is the position of the employes that car oiling and box packing is contractual work which belongs to carmen helpers. In support of this position, we quote below Rule 404:

"Rule 404

Revised, Effective September 15, 1943
Carmen Helpers

"Helpers' work shall be to assist carmen and apprentices and to do car oiling and box packing, rivet heating (except when performed by apprentices), operating bolt threaders, nut tappers, drill press, punch and shear operating (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, backing-out punches, using backing hammer and sledges, assisting in straightening metal parts of cars; washing and scrubbing the inside and outside of passenger coaches preparatory to painting of coaches undergoing general repairs, paint spraying on freight cars and the underframes of coaches and locomotives, sand blasting, cleaning journals, Dodge and locomotive crane firemen (where used in Mechanical Department), and all other work generally recognized as helpers' work."

In an attempt to distort and nullify the intent of the rule, carrier states in a letter dated October 7, 1960 that the current agreement does not give carmen helpers the exclusive right to car oilers and packers' work.

In Award No. 3062, the carrier (ACL Railroad) contended that the car oiling and packing was work belonging exclusively to carmen helpers. They

Thus, in these three awards, carrier finds support in the age old recognition that lower rated work may be assigned to higher rated positions, provided the higher rate of pay is maintained.

In adjusting its forces, carrier has relied upon the Board's consistent decisions involving disputes both similar and identical to this case. To rule in favor of the employes and now find that those decisions and interpretations have a different meaning would certainly burden the carrier with a financial payment which it would feel most unjust.

Complaint is here made because forty-one (41) carman helper positions were abolished within a relatively short period. The normal and ordinary meaning of the agreement rules was not changed or modified by reason of the number of positions abolished. Carrier emphatically denies that its action constituted a violation of the agreement and has conclusively shown that the issue involved in this dispute has been decided previously by this Board in many, many awards. To again bring the issue up apparently is nothing more than an attempt on the part of the employes to get the Division to reverse itself. There is no merit to the claim of the employes and it should be declined.

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 facts and applicable rules here are not essentially different from those in Award 1380, rendered by this Division without a referee, and in Awards 3261, 3263, 3495, 3508, 3509, 3510, 3511, 3603, 3644, and numerous others, which constitute a line of precedents so numerous and well established as to necessitate a denial award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4110

An award is only as good as the reasoning upon which it is based. There is no reason given for the present negative award except so-called precedent

awards. Unfortunately those awards, and likewise the instant award, ignored the primary function of the Adjustment Board, namely to adjust disputes in accordance with the terms of the agreement existing between the parties to said dispute. Upholding the carrier in its unilateral change in the working conditions set forth in the governing agreement is repugnant to the purposes and command of the Railway Labor Act and constitutes an encroachment into the field of collective bargaining. The Division should have held that the carrier's failure to give notice of the desired instant change and negotiate in reference thereto with the statutory representative, as provided by the Railway Labor Act, left the collective agreement in force and required an affirmative award. See Order of Railway Telegraphers vs. Railway Express Agency, 64 S.Ct. 582.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink