

Award No. 4194

Docket No. 3840

2-UP-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That the Carrier violated the current agreement on August 28, 1959 when Gang Foreman performed work regularly assigned to Carmen Helpers.

(2) That accordingly the Carrier be ordered to compensate Carman Helper M. Pewtress for two hours and forty minutes at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: M. Pewtress, hereinafter referred to as the claimant, is employed as a carman helper on the repair track at Ogden, Utah by the Union Pacific Railroad Company, hereinafter referred to as the carrier.

On August 28, 1959 during the hours of the 11 P.M. to 7 A.M. shift, Gang Foreman Glen Geilmann performed the work regularly assigned to carmen helpers. At the time the work was performed by the supervisor, there were a number of qualified employees on duty, together with many others who were off duty but were available for call, including the claimant.

This dispute has been handled with the highest designated officer of the carrier who has declined to adjust it.

The agreement effective September 1, 1949 is controlling.

POSITION OF EMPLOYES: It is without dispute that the work performed by Gang Foreman Geilmann is recognized by the carrier as work belonging to employees of the carmen's craft and is regularly assigned to carmen helpers, as evidenced by Master Mechanic Armstrong's letter to the local chairman dated September 23, 1959.

work is thereby converted into the exclusive work of such electrician, carpenter or painter so as to exclude anyone else from ever keeping the records. The same principle applies to carmen helpers. The fact that members of the Carman's craft happen to be in the majority in a car repair facility and, therefore, keep a few records in connection with shop functions does not mean that someone else cannot do this work without violating the agreement.

Moreover, it is well established that the keeping of accurate records is essentially a supervisory responsibility. Record keeping and other paper work in all departments of a railroad is often performed by foremen and supervisory personnel. In any event, the responsibility for accuracy of records and other paper activities lays inescapably with personnel on the supervisory level. The fact that some of these functions may be delegated by supervisors to subordinates does not divest the supervisor of his responsibility or the propriety of his performing such if not competently performed by the employee. To sustain this claim would be to hold, in effect, that foremen may not do paper work and record keeping which is essentially a management function. Such an award would be repugnant to all accepted principles of management and good administration and, more important, without agreement support.

This claim has no 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 employee or employees involved in this dispute are respectively carrier and employee 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 Carrier maintains car shops at Ogden, Utah, at which certain clerical work has been performed by carmen helpers for a substantial period of time. On August 28, 1959, a carmen helper regularly assigned to the night shift (11:00 P.M. to 7:00 A.M.) was on his rest day. The relief employee did not report for work and had not given advance notice. Gang Foreman G. Geilmann asked the carmen helper on duty to perform some clerical work but the latter would not or could not do it. Geilmann then made certain entries in the book in which bad order cars coming into the repair track are recorded as well as certain entries of cars on manifest sheets. He also prepared switch lists.

The Claimant, carmen helper M. Pewtress, who was on his day off, filed the instant grievance in which he contended that the work performed by Geilmann belonged to the carmen helpers' craft and that he should have been called to perform it. He requested compensation in the amount of 2 hours and 40 minutes at the rate of time and one-half. The Carrier denied the grievance.

1. During the handling of the instant claim on the property, the Claimant asserted that, in addition to the above described work, Geilmann also

handled blue flags and derails (Carrier's Exhibits "A" and "F"). Contrary thereto, the Carrier maintains that only the above described work was here involved (Carrier's Submission Brief, p. 2). No evidence has been offered to support the Claimant's assertion. Thus, we cannot find that Geilmann performed additional work.

2. In support of his grievance, the Claimant primarily relies on Rule 136 of the applicable labor agreement which reads, as far as pertinent, as follows:

"Employees regularly assigned to help carmen and apprentices, employees engaged in . . . all other work generally recognized as carmen helpers' work, shall be classed as helpers."

The undisputed evidence proves that entries in books or sheets of the type here involved have generally been made by carmen helpers for a long period of time prior to the night when the instant grievance arose. Carmen helpers have also generally made such entries thereafter (Carrier's Exhibit "J"). Moreover, Geilmann obviously considered such work as carmen helpers' work because he first assigned it to a carmen helper and only performed it himself after the latter would not or could not do it. Furthermore, General Car Foreman L. J. Adams stated in a letter, dated September 15, 1959: "It is not our intention to have Supervisor performing this kind of work as feel their time should be devoted to supervising and inspecting cars" (Carrier's Exhibit "B"). The only reasonable conclusion to be drawn from the above facts is that a consistent and long-continued practice well-known to all interested parties has existed under which minor clerical work of the nature here in dispute has generally been recognized as carmen helpers' work within the purview of Rule 136.

Accordingly, we are of the opinion that the work performed by Geilmann belonged to the carmen helpers' craft and should have been performed by a carmen helper in accordance with Rules 32 (Assignment of Work) and 136 of the labor agreement.

3. The Carrier has expressed concern that to sustain the instant grievance would be to hold, in effect, that foremen may not do paper work and record keeping which, the Carrier argues, is essentially a management function. Yet our Award does not, and should not be read to imply any such opinion. Minor clerical work of the nature here involved is not a typical managerial function necessarily reserved to management in the interest of efficiency and freedom of action. As the Third Division has stated, "there are few, if any, employees of a carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties." See: Awards 806 and 1405 of the Third Division. All that we are holding here is that the minor clerical work under consideration must, on the basis of a clearly demonstrated past practice, be regarded as carmen helpers' work within the purview of Rule 136. No unwarranted limitation upon the legitimate managerial functions of the Carrier's supervisors can, therefore, be inferred from our ruling.

4. The principle is well established that a party to a labor agreement which has violated the terms thereof is generally subject to an appropriate penalty. However, this is not a hard and fast rule permitting of no exceptions. See: Award 804 of the Second Division. Here, the violation of Rule 136 was

caused by an emergency. The employe regularly assigned to do the clerical work in question failed to report without advance notice. The only other carmen helper on duty would not or could not perform it. Furthermore, the Carrier's statement that the clerical work performed by Geilmann merely "consumed a very short time" (Carrier's Submission Brief, p. 8) stands uncontroverted. Under those circumstances and without setting a precedent for future cases, we are of the opinion that no penalty is warranted.

AWARD

Claim partly sustained and partly denied in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1963.