Award 4257

Docket No. 3825

2-MP-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 118 and 13(a) when other than car helpers were used to perform car helper oiler work at Kansas City, Missouri.

2. That accordingly, the Missouri Pacific Railroad Company compensate Car Helper Oilers F. L. Holloway and S. Martino in the amount of a four (4) hour' call each at the straight time rate for January 31, 1959.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a large train yard and running rip track at Kansas City, Missouri, which went into operation about March, 1959. Both the yards and running rip track work seven (7) days per week, three (3) shifts per day.

Mr. F. L. Holloway and Mr. S. Martino, Car Helpers, hereinafter referred to as the claimants, are employed by the carrier as car oilers on the running rip track. Prior to these new facilities there were four (4) large inspecting yards, rip track and classified repairs at Kansas City. Car Oilers have been assigned to do oiling in both the yards and rip track, as well as in the heavy repair shop.

On January 31, 1959, both claimants were working on regular assigned jobs as car oilers, being assigned to these jobs account of being the senior bidders, at which time they were sent to yards and two carmen were moved over on these jobs. Claim was made by local chairman for violation of Rules 117, 26(a), 118 and 13(a), but the master mechanic has failed to adjust this matter, and the case was appealed to the general chairman for adjudication. However, this matter has been appealed up to and including the highest designated officer of this carrier who has failed to adjust the matter.

The Agreement dated September 1, 1949, as subsequently amended, is controlling.

abolishment of the jobs of the Carmen Helpers but when the positions are discontinued the right of the Carrier to assign the work of Carmen Helpers to Carmen, as here, has been decided adversely to their claim by this Board in awards No. 1380, without Referee, Arbitration Award between the Pennsylvania Railroad Company and United Railroad Workers Division, Transport Workers Union of America, AFL-CIO Arbitration 219 (Case No. B 22) 3/1/57 and the later Docket No. 3087, this Division, Award No. 3262."

Again, in Award 3262 your Board cited with approval the language contained in Award 2959 to the effect that "Machinists can do all the work of the craft * * * ."

In Award 3263, the same issue was again presented to your Board and denied without more than the citation of the award mentioned above and the decision made by Arbitration Board 219, previously quoted.

For these reasons there is no basis for this claim and it must, therefore, 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.

F. L. Holloway and S. Martino, the Claimants in this case, have been employed as carmen helpers (car oilers) at the Carrier's Kansas City (Missouri) yard facilities and have been assigned to the repair track. On January 31, 1959, they were temporarily assigned to augment the car oiling forces in the train yard in order to expedite the departure of trains. During their absence from the repair track, two carmen were assigned by the Carrier to perform the oiling and packing of journal boxes at said track.

The Claimants filed the instant grievance in which they contended that the Carrier violated the applicable labor agreement by assigning other than carmen helpers to perform such work. They requested compensation in the amount of four hours each at the pro rata rate. The Carrier denied the grievance.

1. In support of their claim, the Claimants rely on Rule 118 of the Labor agreement which reads, as far as pertinent, as follows:

> "Employes regularly assigned to help carmen and apprentices . . . ; car oilers and packers; . . . shall be classed as helpers."

We are of the opinion that Rule 118 does not sustain the claim at hand. The principle is well established in railroad labor relations that a journeyman is the master of his craft and may be assigned to perform all the work thereof. See: Award 2959 of the Second Division. It follows that the enumeration of carmen helpers' work in Rule 118 does not confer sole jurisdiction

upon helpers to perform such work to the exclusion of carmen journeymen but is merely descriptive of the work that may be performed by helpers. In other words, Rule 117 of the labor agreement which contains the classification of work of carmen and Rule 118 are not mutually exclusive. See: Awards 3617, 3751, 3801, and 3835 of the Second Division.

Accordingly, we hold that the Carrier did not violate Rule 118 when it assigned carmen temporarily to perform the oiling and packing of journal boxes here in dispute.

2. The Claimants also rely on Section 11 of the Memorandum Agreement of June 18, 1942 (Decision No. SC-88-1) which reads, as far as relevant, as follows:

> "When (truckmen-oilers) are advanced . . . under the provisions of this agreement or leave the service for any cause, the work to which they are at that time assigned will then **revert** to mechanics or helpers . . . ; oilers work consisting of oiling, box packing and applying and removing brasses will **revert** to helpers . . . " (Emphasis ours.)

The Claimants contend that the term "revert" appearing in Section 11 demonstrates that the Carrier has contracted to assign the work of oiling and packing journal boxes exclusively to carmen helpers. We disagree. The intent and aim of Section 11 can properly be understood only in the light of its history. The record reveals that several early labor agreements between the Carrier and the Organization which became effective in the 1920's contained the following provision with respect to carmen helpers.

> "Helpers—Employes regularly assigned to help carmen and apprentices, car oilers and packers . . ."

It will be noted that the above wording is substantially identical with that appearing in Rule 118 of the current labor agreement as far as oiling and packing of journal boxes is concerned. However, in 1929 a new position designated as truckmen-oilers was established which was intermediate between carmen and carmen helpers. Truckmen-oilers performed among other things, the work of oiling and packing journal boxes which was formerly included in the classification of work of carmen helpers. Provision for the assignment of that work to truckmen-oilers was made in the labor agreement which became effective as of April 1, 1929. During the 1930's the employes represented by the Organization objected to the establishment of the intermediate position and requested its elimination. The Carrier rejected this request for some time. In 1942, the Carrier and the Organization agreed, however, that the position of truckmen-oilers would gradually be eliminated through attrition and that the work of oiling and packing journal boxes would then "revert" to carmen helpers. This understanding was incorporated in the Memorandum Agreement. Section 10 thereof provides, among other things, that the words "car oilers and packers" should be inserted in Rule 118 of the labor agreement and Section 11 provides for the reversion of oiling and packing of journal boxes to carmen helpers. Thus, all that the latter Section intended to accomplish was to restore the assignment of oiling and packing journal boxes to helpers, just the same as such assignment was provided in the successive labor agreements preceding the establishment of the position of truckmen-oilers. The record is devoid of any evidence or indication that the parties in entering into the Memorandum Agreement intended to go further and to confer exclusive jurisdiction upon carmen helpers

to perform such work—a privilege which they never had previously and which thus could not "revert" to them.

In summary, we held that Section 11 of the Memorandum Agreement does not sustain the instant grievance.

3. The Claimants argue further, that the Carrier violated their seniority rights as provided in Rule 25(a) of the labor agreement. This Rule prescribes that "seniority of employes in each craft covered by this agreement shall be confined to the point and seniority sub-division employed." We fail to see any violation of the Rule by the Carrier in this case. The Carrier was entitled to assign carmen to perform the work under consideration. The exercise of that right in no way violated or adversely affected the Claimants' seniority rights.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

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

DISSENT OF LABOR MEMBERS TO AWARD 4257

The majority's statement that "Rule 117 . . . and Rule 118 are not mutually exclusive" is not true—Rule 117 defines carmen's work and Rule 118 defines the work of carmen helpers, including car oilers and packers. Accordingly, the carrier did violate Rule 118 when it assigned carmen to perform oiling and packing. The majority's statement that "We disagree" that Section 11 demonstrates that the carrier has contracted to assign the work of oiling and packing journal boxes exclusively to carmen helpers is in complete disagreement with the later acknowledgment of the majority that "In 1942, the Carrier and the Organization agreed . . . that the position of truckmen-oilers would gradually be eliminated . . . and that the work of oiling and packing journal boxes would then 'revert' to carmen helpers. This understanding was incorporated in the Memorandum Agreement. "Revert" means "to return." The language is so clear and precise that one is at a loss for words to try to refute what is so obvious. Under the provisions of Rule 25 the carmen used held no seniority rights in the seniority sub-division at Kansas City, Missouri; therefore, their performance of work in that seniority sub-division on the date in question constituted a violation of the agreement and the claimants, who held seniority rights there during this period, are entitled to compensation as claimed.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink