Award No. 4264

Docket No. 3946

2-GN-MA-'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. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Machinists)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier acted in violation of the controlling agreement when it arbitrarily, on the date of September 14, 1959, removed Machinist Helpers Carl H. Peterson and Richard A. Peterson from truck driving positions to which they had been assigned by bulletin.

2. That the Carrier be ordered to return said truck driving positions to the above named employes.

3. That the Carrier be ordered additionally to compensate these Claimants in the following manner: Mr. Carl H. Peterson to be paid three (3) hours per day at the applicable rate of time and one-half, five (5) days per week; Mr. Richard A. Peterson to be paid three (3) hours per day at the applicable rate of time and one-half, two (2) days per week. Both claims to begin on the date of September 14, 1959, and to continue until these employes are returned to their rightful positions as truck drivers.

EMPLOYES' STATEMENT OF FACTS: For many years, and on different shifts, machinists stationed at Minneapolis junction roundhouse have been transported to outlying points, along with tools and equipment, on a daily servicing basis. They were driven to Lyndale Junction, Union Yard and other locations as required for the purpose of inspecting, testing, repairing and determining the fitness for service of locomotives that "tied up" at these outlying points. Because of their particular responsibilities, these assignments were given a differential rate and were so bulletined to employes of the machinists classification.

The driving of the trucks in which they were conveyed to these points was assigned to employes of the machinist helpers' classification through bulletin. These machinist helpers, in addition to their truck driving duties, performed other work consistent with their classification, including rendering assistance to the machinist they accompanied.

For the foregoing reasons the carrier respectfully requests that the claims of the employes 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.

For many years, employes stationed at the Carrier's Minneapolis Junction Roundhouse have been sent to certain outlying train yards to inspect, test, repair, fuel, sand, and water diesel switch engines. Formerly, a crew consisting of a machinist, machinist helper, hostler, hostler helper, and a laborer were dispatched from the Roundhouse to the outlying points. Apart from assisting the machinist, the machinist helper also drove a one-half ton panel truck to transport the employes.

In or about September, 1959, the Carrier acquired a large diesel service truck with a fuel oil capacity of 2,000 gallons. The truck also carries large quantities of sand, water and lubricating oil. The use of the truck eliminated the need for the hostler and hostler helper. As a result, the Carrier abolished said positions. It also assigned the driving of the truck to the laborer who is represented by the International Brotherhood of Firemen and Oilers, Etc. Since some access facilities initially were inadequate for the large service truck, the one-half ton panel truck was still used for some time and was driven by the machinist helper. In November, 1959, all necessary access facilities were completed. The positions of machinist helper were then abolished but were re-bulletined as machinist helpers' positions without the formerly assigned duties of driving the small panel truck. The record seems to indicate that a machinist helper has continued to accompany the machinist when the latter services diesel switch engines at outlying points (Organization's Rebuttal Brief, p. 1).

The two Claimants, machinist helpers C. H. Peterson and R. A. Peterson, who are represented by the International Association of Machinists had been assigned to assist the machinist and to drive the one-half ton panel truck during their respective shifts (C. H. Peterson: 12:00 Midnight to 8:00 A. M., Monday through Friday; R. A. Peterson: 12 Midnight to 8:00 A. M., Saturday and Sunday). They filed the instant grievance in which they protested the driving of the large service truck by the laborer. They requested that the Carrier be ordered to return the truck driving positions to them. They also asked for compensation in the amount of three hours per day at the rate of time and one-half, five days per week for C. H. Peterson and two days per week for R. A. Peterson until they would again be assigned to their positions as truck drivers. The Carrier denied the grievance.

In support of their claim, the Claimants' rely on Rule 94 of the applicable labor agreement which reads, as far as pertinent, as follows:

> "When new methods or new processes are introduced in the performance of work covered by this agreement and not specifically cov-

ered in the special rules of a craft, conference will be held between the General Officers and the General Committee with a view to determine the proper assignment of such work. In the event agreement is not reached management will be permitted to assign employes to perform the work, it being understood that such assignment would in no way establish a precedent or jeopardize the claims of any craft, it being further understood that should agreement later be reached changing the assignment of such work it will not result in any claims against the Carrier."

1. The Carrier has objected to our jurisdiction on the ground that the Brotherhood of Firemen and Oilers is involved in this dispute and should have been given due notice in accordance with Section 3, First (j) of the Railway Labor Act. We disagree. The Carrier seems to see this case as requiring decision whether the driving of the large service truck belongs to employes represented by the Brotherhood or by the Machinists' Organization. Yet our Award does not and should not be read to resolve that question. The only issue submitted to us for jurisdiction is whether or not the Carrier violated Rule 94 when it assigned the driving of the large service truck to the laborer instead of to the Claimants (see: Organization's Rebuttal Brief, p. 3). The question regarding the ultimate jurisdiction over the work under consideration is not before us and we express no opinion thereon. Accordingly, we are of the opinion that the Brotherhood of Firemen and Oilers is not involved in this dispute within the purview of Section 3, First (j) and consequently not entitled to notice thereunder.

2. Rule 52 of the labor agreement provides that machinist helpers' work "shall consist of helping machinists . . . and all other work generally recognized as helpers' work." The evidence on the record considered as a whole reveals beyond doubt that machinist helpers assigned to accompany the machinist when the latter serviced diesel switch engines at outlying points were also assigned to drive a light truck for at least twenty years prior to the time when the instant grievance arose. The record does not indicate that employes other than machinist helpers were also assigned to drive the light truck in such instances. Hence, we find that a consistent and long-continued practice existed at the Minneapolis Junction Roundhouse well-known to and generally accepted by all interested parties under which driving a light truck in instances like those here involved has generally been recognized as machinist helpers' work. This practice has become a part of the labor agreement. As a result such work was covered by the agreement—just the same as if it had explicitly been described therein. See: United Steelworkers of America v. Warrior and Gulf Navigation Co., 363 U. S. 547, 582; 80 S. Ct. 1347, 1352 (1960); Award 3873 of the Second Division.

The use of the new large service truck is both a more efficient and a more economical method of servicing diesel switch engines at outlying points than the one used previously (see: Carrier's Rebuttal Brief, p. 2). Hence, we are of the opinion that the introduction of the large service truck constituted the introduction of a new method in the performance of work covered by the agreement within the contemplation of Rule 94. The Rule clearly and unambiguously prescribes that in such instances a conference will be held between the Carrier's officers and the General Committee to determine the assignment of the work. Only in the event that an agreement is not reached may the Carrier assign employes in its discretion to perform the work. The record is devoid of any indication that such a conference was held in the instant case prior to the assignment of driving the large truck to the laborer. As a result, we hold that the Carrier violated Rule 94.

3. Because of said violation, the Claimants are entitled to be compensated at the pro rata rate for their loss in compensation resulting from the fact that they were deprived of the right to drive the large truck until the Carrier complies with Rule 94. The available evidence is inconclusive as to the exact amounts to which they are entitled. We are confident that the Carrier's records will reveal them. Yet if the parties cannot reach an understanding, each party shall be entitled to re-submit this case to us solely for a determination of such amounts. The Claimants further request for time and one-half is unjustified and hereby denied.

4. The Claimants have also requested that the Carrier be ordered to return the truck driving positions to them. Section 3, First (i) of the Railway Labor Act does not confer authority upon us to issue such an order. For this reason, we hereby deny said request. See: Awards 5572, 7168, and 7222 of the Third Division.

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 11th day of July, 1963.

CONCURRING AND DISSENTING OPINION OF LABOR MEMBERS TO AWARD NO. 4264

We concur with the findings of the majority except on part four (4) where they state:

> "4. The Claimants have also requested that the Carrier be ordered to return the truck driving positions to them. Section 3, First (i) of the Railway Labor Act does not confer authority upon us to issue such an order. For this reason, we hereby deny said request. See: Awards 5572, 7168 and 7222 of the Third Division."

Section 3, First (i) contains no such limitations and the majority could cite none.

On this point we dissent.

C. E. Bagwell
T. E. Losey
R. E. Stenzinger
E. J. McDermott
James B. Zink