

Award No. 4315
Docket No. 3942
2-P&LE-TWUOA-'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:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION OF
AMERICA, A. F. of L. - C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

A wreck occurred in the vicinity of Pittsburgh Station. The McKees Rocks wreck crew with their equipment were at this wreck. On February 4, 1960, E. Harris, laborer from Pittsburgh Station, was used to wash dishes on the wreck train from 8:00 AM to 4:00 PM. Then R. Campbell and L. Rubinosky, coach cleaners, were used to wash dishes from 4:00 PM to midnight. This is a violation of the agreement, Rule 39, paragraphs (e) and (f). The wreck crew is composed of employes from McKees Rocks, Pa., which is a seniority district of its own, yet the men from the Pittsburgh seniority district were used to perform work that should have been done by employes from the McKees Rocks seniority district. For this reason the organization requests that J. Sabol be compensated eight (8) hours at the straight time rate of pay for February 4, 1960 for the hours 8:00 AM to 4:00 PM and time and one-half pay for the hours 4:00 PM until 12:00 midnight. Also time and one-half is requested for H. Mayes for the hours 4:00 PM until 12:00 midnight. On February 5, 1960 W. Wegrzyn and W. Pierce, coach cleaners, Pittsburgh Station, were used to wash dishes from 12:00 midnight until 8:00 AM. W. E. Harris, laborer, Pittsburgh Station was used from 8:00 AM to 4:00 PM. Compensation asked for H. Mayes, double time for hours 12:00 midnight to 8:00 AM. For J. Sabol, double time 12:00 midnight to 8:00 AM and then straight time 8:00 AM to 4:00 PM.

EMPLOYEES' STATEMENT OF FACTS: This case arose at McKees Rocks, Pa. and is known as Case M-286.

That the wreck crew is composed of carmen from the McKees Rocks seniority district.

That not only was Rule 39, paragraph (e) and (f) violated, but also Rule 27, paragraph (b).

where the wreck train diner was used, employes other than carmen helpers have performed dish washing tasks. Carrier has also shown that claimants were regularly assigned on February 4th and 5th, 1960, and were working on these dates. Awards of the Second Division, National Railroad Adjustment Board, have been cited by carrier as supporting its position.

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.

On February 4, 1960, nineteen cars of the Carrier's train "ore Special" were derailed in the vicinity of the Pittsburgh (Pennsylvania) passenger station. The Carrier sent its McKees Rocks (Pennsylvania) wreck train with its wrecking crew to the scene of the accident. This crew consisted of a derrick engineer, a derrick fireman, seven groundmen, and a cook, all of whom are represented by the Organization. In addition, two wreck trains of the Baltimore & Ohio Railroad Company with their crews were used. The Carrier's train diner was on the scene from the morning of February 4th until the afternoon of February 6th. On February 4th and 5th, the Carrier assigned a shop laborer from the Pittsburgh station to wash dishes, carry water, etc., for eight hours on each day. This laborer belongs to a different seniority district than the McKees Rocks wrecking crew and is also covered by a different labor agreement.

The Claimant J. Sabol has been employed by the Carrier as a carmen helper within the same seniority district as the McKees Rocks wrecking crew. He filed the instant grievance in which he contended that the Carrier violated the applicable labor agreement by assigning the shop laborer to wash dishes, etc. The Carrier denied the grievance.

1. At the outset, we note the following:

In the Organization's submission brief, claim was made on behalf of the Claimant in the amount of 8 hours at the pro rata rate and 8 hours at the rate of time and one-half for February 4, 1960, as well as of 8 hours at double rate and 8 hours at the pro rata rate for February 5, 1960. However, at the referee hearing said claim was reduced to 8 hours at the pro rata rate for each day. In addition, the Organization originally submitted a claim in this Docket on behalf of H. Mayes but withdrew said claim at the referee hearing. Thus, the only claim before us is the Claimant's request for compensation in the amount of 16 hours at the pro rata rate.

2. This case turns on the question as to whether the Carrier violated the applicable labor agreement when it assigned a shop laborer from the Pitts-

burgh seniority district to wash dishes, etc., instead of a carmen helper from the McKees Rocks seniority district. For the reasons hereinafter stated, we are of the opinion that the answer is in the negative.

In support of his claim, the Claimant relies on Rule 27, Paragraph (b) which reads as follows:

“When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.”

The flaw in the Claimant's argument is that he reads Paragraph (b) in isolation. However, the Paragraph can properly be understood and interpreted only if it is read in the context in which it appears in the labor agreement and co-ordinated with the other Paragraphs of Rule 27. The latter is headed “Wrecking Crews” and generally deals with the composition of such crews, their working conditions, and the requirements prescribed for calling them outside of or within yard limits. In other words, Rule 27 governs wrecking service. It is undisputed that the work performed by the shop laborer (washing dishes, carrying water, etc.) is not wrecking service (see: Carrier's submission brief, p. 9 and Organization's rebuttal brief, p. 2). It follows that such work is not covered by Rule 27. Hence, the Rule has no application to the facts underlying this case.

3. The Claimant also charges the Carrier with a violation of his seniority rights as provided in Rule 39 (e) and (f) of the labor agreement. In this connection he argues that a carmen helper from the McKees Rocks seniority district should have been assigned to do the work which was performed by the shop laborer. It is correct that seniority assures an employe of preference for a job or work in his classification if and when they are available. See: Awards No. 4312 and No. 4314 of the Second Division. The question which thus emerges is whether washing dishes, carrying water, etc., in the circumstances presented by this case is work falling in the classification of carmen helpers under the labor agreement and therefore, protected by the contractual seniority provisions. We do not think so. Rule 26 of the Agreement contains a detailed description of the job content of the position of carmen helpers. Work of the type here in dispute is not specifically listed in the Rule. Accordingly, such work belongs to carmen helpers only if it must be regarded as “all other work generally recognized as carmen's helpers' work” in accordance with the last half-sentence of Rule 26. The Claimant asserts that this is the case and that, prior to the time when the instant grievance arose, carmen helpers from the McKees Rocks seniority district were always assigned to perform work of the type here involved on the wrecking train, when needed. The Carrier has denied the Claimant's assertion. The burden of proof rests upon the Claimant. The evidence on the record considered as a whole does not sustain his assertion. On the contrary, the available evidence discloses that for more than 20 years no carman helper has been called for the sole purpose of washing dishes or otherwise assisting in the kitchen of the McKees Rocks wreck train dining car (see: Carrier's Exhibit No. 1). Since the work under consideration is neither explicitly nor generally covered by Rule 26, it is self-evident that carmen helpers are not entitled thereto under the contractual seniority provisions.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1963.