

Award No. 4380
Docket No. 4190
2-C&O-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region and Hocking Division)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chesapeake and Ohio Railway Company violated the current agreement particularly Rule 156, by assigning car repairmen and car repairmen apprentices the work of helping on punches in the fabrication shop heating and holding on (bucking) rivets at the Russell Car Shop, Raceland, Kentucky.
2. That accordingly the Chesapeake and Ohio Railway Company be ordered to discontinue the practice, and that car repair helpers be assigned the work of helping on punches in the fabrication shop, heating and holding on (bucking) rivets.

EMPLOYES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Co. operates a heavy repair shop at Raceland, Ky. in which they build, repair and maintain freight cars. They employ a large force of car repairmen, car repairmen apprentices and car repair helpers. The work of making repairs to the freight cars includes work of helping on machine punches, heating rivets and holding on (bucking) rivets. Such work as helping carmen on machine punches, heating rivets and holding on (bucking rivets) is recognized as carman helpers' work at the Russell car shop, Raceland, Kentucky.

A large number of carmen helpers hold regular assignments of helping on machine punches heating rivets and holding on (bucking) rivets, however, when the work load becomes heavy or additional carmen helpers are needed, car repairmen and car repairmen apprentices are assigned, practically each day, despite the fact that a large number of carmen helpers are in furlough who hold seniority at Russell car shops, Raceland, Kentucky under rule 31 and are available and willing to perform said work.

For these reasons, carrier urges that the claim 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.

Carrier operates a car shop at Raceland, Kentucky and employs a large number of carmen, car repairmen, carmen helpers and carmen apprentices. At the time of filing of this claim carmen helpers were on furlough though all are working now.

The Organization contends that holding on (bucking) rivets, heating of rivets and helping on machine punches are all bulletined as helpers' positions and only carmen helpers can perform those jobs. Moreover it requests that the Carrier be required to discontinue the practice of assigning car repairmen and car repairmen apprentices to do this work. The employes contend that Rule 156, quoted below, clearly contracts all of the work enumerated therein to carmen helpers and that this Rule, as a part of the agreement between the parties has been in existence since July 21, 1921.

It is undisputed that the Carrier has regularly assigned the disputed work to car repairmen and/or car repairmen apprentices while carmen helpers are, or were, on furlough. The Carrier states, without a denial from the employes, that such a practice has always been in effect on this property.

The provisions of Rules 154 and 156 of the Agreement between the parties are as follows:

"RULE 154

"(2) Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing in vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application

"The Carmen classification and Carmen Helpers classification plainly were not intended to be mutually exclusive. As the name implies the purpose of the latter class is to help the former class within its field of work. Thereby certain of the unskilled duties connected with carmen's work may be assigned to lower paid employees when the amount of such work justified the assignment.

"These Helpers have seniority rights among themselves but even where they are regularly assigned we find no rule or reason to prevent the use of carmen for tasks usually performed by them, or for a tour of duty, when a Helper is not available and the carmen's rate is paid."

The employees have well recognized on this property that mechanics or apprentices may perform all work of the craft. There have been many instances where work performed by helpers was taken over by mechanics and the helpers formerly employed thereon furloughed. This applied not only in the carman craft, but in all crafts. This has been true not only on this property, but on the railroads of the nation as a whole.

The subject matter is well summed up in the opinion of Judge J. Eagan in the case of Coleman vs. The Delaware & Hudson Railroad, in the Court of Common Pleas of the County of Lackawanna, No. 205 April Term 1956, wherein it was stated:

"... that machinists are entitled to do all the work of their craft, including that which is sometimes performed with the assistance of machinist helpers. Machinist helpers, on the other hand, are strictly limited in the duties which they are permitted to perform. Under the parties' interpretation of the agreement, the extent to which helpers shall be utilized at all is a matter for the company's judgment based upon its production requirements. Therefore, the performance of so-called machinist helpers' work by machinists did not and does not violate any contract rights of the machinist helpers. . . ."

The rules of the machinist craft under consideration in that case are similar to the carman rules under consideration in the instant case, and the practice on this property with respect to the use of carman mechanics to perform all work of the craft, including that which may be performed by helpers, with or without the assistance of a helper, is in conformity with that in the case under consideration resulting in the above opinion of the court.

Carrier has shown:

- (1) That there has been no violation of Rule 156 or any rule in the shop crafts agreement in permitting carman mechanics or apprentices to perform work outlined in the rule.
- (2) That no rule in the agreement assigns any work exclusively to carman helpers.
- (3) That throughout the history of the collective bargaining agreement, carman mechanics and apprentices, as well as mechanics and apprentices of other crafts, have been used to perform all work of the respective craft.
- (4) That the issue in this case has been the subject of a series of awards by your Board, all of which deny the claim of the employees as made in this case.

of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work.

"(b) It is understood that present practice in the performance of work between the carmen and boilermakers will continue."

"RULE 156

"(a) Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint on other than passenger cars preparatory to painting, car oilers and packers, stock keepers (car department), operators of bolt threaders, nut tappers, drill presses and punch and shear operators (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, and backing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, rebrassing of cars in connection with oilers' duties, cleaning journals, repairing steam and air hose, assisting carmen in erecting scaffolds, remove and apply emery wheels, true emery wheels and grind stones, lace belting, and oil shafting and other machinery, and all other work generally recognized as carmen's helpers work, shall be classed as helpers.

"(b) Carmen helpers will help carmen and carmen apprentices to the same extent as helpers help mechanics and apprentices in other departments.

"(c) They will do other work assigned to them by their foreman, but not carmen's or apprentices' work."

When these two rules are read together, as they must be; when the Carrier's proof of the existence of a past practice manifests a long standing acceptance by the Organization of the Carrier's interpretation of the disputed rule, as is here the case; and when certain prior Awards of this division are carefully studied it becomes evident that the parties did not intend to give carmen helpers the exclusive right to do the work enumerated in Rule 156 because Rule 156 sets forth only a small portion of the work that carmen are required to be able to do, and that is also included in their classification of work as found in Rule 154.

We believe that the Organization's interpretation of the Rule is in error therefore its request should be denied.

AWARD

Request denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4380

The statement of the majority that "It is undisputed that the Carrier has regularly assigned the disputed work to car repairmen and/or car repairmen apprentices while carmen helpers are, or were, on furlough. The Carrier states, without a denial from the employees, "that such a practice has always been in effect on this property" implies that the majority overlooked or ignored the first sentence in the "Conclusion" of the employees' rebuttal which states that "All allegations or implications of the Carrier designed to support their position not heretofore specifically answered are emphatically denied.

There is no basis for the holding of the majority that Rules 154 and 156 must be read together. Rule 154 deals with the classification of work for carmen. Rule 156, entitled "Carmen Helpers" defines the work of carmen helpers. Carmen helpers and carmen are on separate seniority rosters. A reason exists for providing separate seniority rosters for carmen and carmen helpers it is evidence that each is performing a different class of work which is assigned to employees having seniority to perform it.

The majority states "Carrier's proof of the existence of a past practice manifests a long standing acceptance by the Organization of the Carrier's interpretation of the disputed rule, as is here the case." There is no evidence of such practice in this case. Even if there had been it would not estop the organization from enforcing its agreement as practice cannot be considered as an agreed interpretation of a rule when the rule is too plain to require interpretation. To the extent that a carrier violates an agreement, this Board may remedy the wrong done to employees. In this instance an order should have been issued requiring the Carrier to comply with the existing agreement.

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