

Award No. 4606

Docket No. 4511

2-GN-FO-'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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O.
(Firemen and Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carrier improperly assigned Hostlers (Locomotive Firemen) to assist Laborers (Classified or Common) in putting boiler water in storage tanks of Diesel locomotives on passenger trains going through Willmar, Minn.

2. That accordingly the Carrier be ordered to stop this practice and compensate Laborer Ray Haats in the amount of four hours at the straight time Laborer's rate of pay for each Sunday from January 14, 1962 to April 29, 1962, both dates inclusive.

EMPLOYEES' STATEMENT OF FACTS: Ray Haats, hereinafter referred to as the claimant, entered the service of the Great Northern Railway Company, hereinafter referred to as the carrier, as a Laborer in the roundhouse at Willmar, Minnesota on July 14, 1937, and has been employed continuously since that time.

For years prior to the mid-1940's, when steam locomotives were used on passenger trains going through Willmar, Laborers were assigned to go to the passenger station, about one mile from the roundhouse, to put boiler water in the tenders of steam locomotives with this work being performed on all three shifts seven days per week, 12 months per year. In the mid-1940's when diesel locomotives replaced steam locomotives, carrier continued to send laborers to the passenger depot to put boiler water in the storage tanks of diesel locomotives used in through passenger service through Willmar, but doing this only during the cold weather months, normally from about November 1st to May 1st, two Laborers being thus used each day, and on each shift.

Effective October 1, 1959 all mechanics and helpers employed in the Will-

performed by outside hostler helpers who are recognized as employees of "other crafts" in Rule 12(b) of the laborer's schedule agreement, and are covered for rates of pay purposes by the same agreement which covers hostlers.

3. Watering and servicing of locomotives has been performed by locomotive engineers, firemen and hostlers under various circumstances dating back many years before the organization negotiated its first schedule agreement covering roundhouse laborers.

For the foregoing reasons, the carrier respectfully requests that all of 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.

The Claimant is a Laborer (unclassified) at carrier's Willmar, Minnesota roundhouse who alleges that Hostlers were improperly assigned to assist laborers in putting boiler water in storage tanks on passenger trains going through Willmar on each Sunday from January 14, 1962, through April 29, 1962. He asks that the carrier be ordered to stop this practice and requests compensation for four hours for each Sunday involved.

The record discloses that on week days a Laborer receiving pay as an "Outside Hostler Helper" performed the work in question and was assisted by a Laborer (Unclassified). On the Sundays prior to January 14, 1962, no one assisted the "Outside Hostler Helper" who performed the work in question. On the last date mentioned and continuing through April 29, 1962, a Hostler accompanied the "Outside Hostler Helper" to the passenger station and the two employes alternated in filling the boiler water storage tanks.

For the reasons given we find that the claims must be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December 1964.

and engines run through, they will be paid actual time consumed in doing the work at schedule rates with a minimum of five miles.

If time consumed exceeds twenty-four (24) minutes actual time to be paid, computed on basis of 12½ miles per hour."

The current agreement between the carrier and the claimant organization was effective September 1, 1949, and that organization negotiated its first schedule agreement covering roundhouse laborers on this property in 1941. Under similar circumstances, in Award No. 1863, *Carmen v. A.R.T., Referee Lloyd H. Bailer*, this board denied an attempt by the carmen's organization to extend its jurisdiction at the expense of stores department employes, as follows:

"In view of this history, and in light of the contract provisions cited by petitioner, we must conclude that carrier has not been in violation of the agreement as charged. Having been cognizant of the practice in dispute since 1941, at the latest, we are entitled to assume that petitioner's failure to propose or obtain a revision of the scope rule in the 1944 agreement to expressly assign to carmen the work in question indicated organization's acceptance of existing practice in this regard. Thus in effect the Division is now being asked to amend the disputed work to carmen. This, of course, we have no power to do."

Again, in Award No. 3778, *Electrical Workers v. G.N., Referee Mortimer Stone*, this board denied an attempt by the electrical workers to obtain the exclusive right to operate cranes based solely on the classification of crane operator in its schedule agreement. This board held that crane operation could properly be assigned to stores department employes as follows:

"The scope rule of the Clerks' agreement, Rule 1(e), includes 'store crane and derrick operators' and antedates the scope rule provision relied on by the Organization here. Thereunder the operation of the 'outside' crane belonged to Store Department employes."

Argument Concerning Damages

Even if the board finds some rule or agreement which grants to laborers the exclusive right to perform the work in question, the claimant would not be entitled to the penalty claimed in this case. There is no rule or agreement which prescribes a penalty under the circumstances, and the claimant would not be called to assist in the 12 minutes of work involved. If it were held that the work in question could not be performed by hostlers, then the hostler helper would perform all of the work himself even if it would require a few more minutes delay to the train at Willmar. Under no circumstances would an employe on his rest day be called to assist in the performance of 12 minutes work.

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. The organization has failed to point out any specific contractual language to carry its burden of proving that roundhouse laborers have been granted the exclusive right to water passenger locomotives at Willmar Depot to the exclusion of hostlers.
2. The organization's own evidence indicates that some of the work was