

Award No. 4683

Docket No. 4457

2-L&A-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 3(59), RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

LOUISIANA & ARKANSAS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the current agreement carmen helpers were unjustly removed from service on December 1, 1961, and supplanted by Carmen at Deramus Shops and Yard, Shreveport, Louisiana.

2. That, accordingly, the carrier be ordered to compensate the carmen helpers named below, including all others whose rights are violated, in the amount of eight (8) hours each per day at the applicable carmen helpers' rate of pay for all time the aforesaid violation continues, retroactive to December 1, 1961:

C. L. Gibbons
C. Monk
M. M. Melton

E. W. Gandy
J. D. Burson
R. E. McCain
L. J. Myers

J. L. Giddings
J. M. Elmore
M. Cain

EMPLOYEES' STATEMENT OF FACTS: Effective December 1, 1961, all but two (2) carmen helpers, including car oilers, were furloughed at carrier's Shreveport, Louisiana Deramus Shops and Yards and the duties previously performed by carmen helpers were arbitrarily assigned to carmen.

Subsequent to the aforementioned date (December 1, 1961) all carmen helpers' duties, including the oiling, packing, as well as brassing of cars at Shreveport, Louisiana have been performed by carmen.

This dispute has been handled with the carrier up to and including the highest officer designated by the carrier to handle such disputes with the result that all declined to make satisfactory adjustment.

Deramus Shops and Yard are a coordinated facility of The Kansas City Southern Railway Company and Louisiana & Arkansas Railway Company. Seniority of mechanical forces of The Kansas City Southern Railway Com-

"CARMAN HELPERS

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 in train yards, cleaning journals, assisting carmen in erecting scaffolds, and all other work generally recognized as carmen's helpers' work shall be classed as helpers."

There is nothing in Rule 92 which states that helpers have the exclusive right to perform the duties listed. The rule is only intended to describe the portion of carman work that may be performed by helpers. A helper has never been regarded as having exclusive jurisdiction over any certain work. The helper usually works with a mechanic, performing the less complex duties of the craft and when the mechanic no longer needs a helper, there is no justification for retaining a position which is not needed.

The issue in this claim has been previously decided on other properties by this division of the Adjustment Board in its Awards 1380, 3261, 3262, 3263, 3495 to 3511, 3617, 3723 and 3934. Rule 92 is similar to the rules cited in those awards and under the circumstances the claim should be denied, and this board is respectfully requested to so find.

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 waived right of appearance at hearing thereon.

The Deramus Shops and Yards at Shreveport, Louisiana, are a coordinated facility of The Kansas City Southern Railroad Company and the Louisiana & Arkansas Railway Company.

On December 1, 1961, all Carmen Helpers at that facility, save two, were furloughed and their duties — including oiling, packing and brassing of cars — were performed by Carmen.

On May 31, 1962, the remaining two Carmen Helpers, who had been assigned to heavy highway trucks, had their jobs abolished and their work duties were assigned to Carmen.

The Organization contends that the work of car oilers and packers is performed by Carmen Helpers alone and is done independently of any Carmen work duties. The Organization further contends that the Carrier's action violated Rule 92 of the controlling Labor Agreement.

The Carrier's position is that it is not prohibited from eliminating Carmen Helpers when their services are not needed and that Rule 92 was not violated. The Carrier further contends that Carmen are doing both classes of work, i.e., Carmen's work and Helpers' work, for which they were paid the Carmen's rate of pay.

The pertinent portions of the principal Labor Agreement rules involved are as follows:

"RULE 15 — FILLING VACANCIES

When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill, temporarily, the place of another employe receiving a lower rate, his rate will not be reduced."

"RULE 92 — CARMEN HELPERS

Employes regularly assigned to help carmen and apprentices; employes engaged as * * * car oilers and packers, * * * rebrassing of cars in connection with oilers' duties * * * and all other work generally recognized as carmen's helpers' work, shall be classed as helpers."

An objective analysis and evaluation of the entire record and the cited Awards fail to disclose comfort or support for the Organization's position. The work of car oilers and packers is set forth as Carmen's Helpers' duties in Rule 92. Therefore, we cannot accept the Organization's position that such work is of a special kind because it is performed by Carmen Helpers alone without the presence of Carmen.

Nowhere in the controlling Labor Agreement do we find any prohibition against Carmen Helpers being furloughed. Therefore, the Carrier's right to furlough Carmen Helpers cannot successfully be challenged.

In Second Division Award 1380, the rule involved therein is almost identical with Rule 92. Also the factual situation involved in that Award is readily identifiable with that in our dispute. We agree with the decision made in that dispute.

Accordingly, we must deny this claim.

AWARD

Claim 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 26th day of February, 1965.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4683

The majority correctly admits that on December 1, 1961 all carmen helpers save two were furloughed and their duties were performed by carmen. They further admit that "The work of car oilers and packers is set forth as Carmen Helpers' duties in Rule 92." Thus the holding that "Therefore, we cannot accept the Organization's position that such work is of a special kind because it is performed by Carmen Helpers alone without the presence of Carmen" is incomprehensible.

As to the inexplicable holding that "Nowhere in the controlling Labor Agreement do we find any prohibition against Carmen Helpers being furloughed. Therefore, the Carrier's right to furlough Carmen Helpers cannot successfully be challenged," may we state that nowhere did the organization contend that carmen helpers could not be furloughed. The organization's contention was and is that the work of furloughed carmen helpers cannot be assigned to carmen.

The findings show an utter lack of understanding of the applicable rules of the controlling agreement and uphold the carrier in arbitrarily and unilaterally wiping out the substantive rights of employees, notwithstanding the fact that Sec. 2 Seventh of the Railway Labor Act requires that "No carrier, its officers or agents, shall change the rates of pay, rules or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act." Reasonable minds should not be expected to believe that any such ridiculous result as that was intended.

E. J. McDermott

C. E. Bagwell

T. E. Losey

Robert E. Stenzinger

James B. Zink