

Award No. 4736

Docket No. 4561

2-KCS-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly furloughed Carmen Helpers C. H. Smith, A. C. Williams, C. Walton, R. Thomas, I. Moore, P. Thomas, Jr., B. Franklin, B. G. Thomas, E. Fullwood, M. Stephens, C. Thomas and J. Blount (sick), and assigned Carmen Mechanics to perform Carman Helper's work.

2. That accordingly the Carrier be ordered to recall the above named Helpers to service and assign them to perform the work classified as Carmen Helper's work in the effective shop craft agreement, and to compensate them for all time lost since December 1, 1961.

EMPLOYES' STATEMENT OF FACTS: Carmen Helpers C. H. Smith, et. al., hereinafter referred to as the claimants, were until December 1, 1961 employed by the Kansas City Southern Railway Company, hereinafter referred to as the carrier, at Shreveport, Louisiana.

Effective December 1, 1961, the carrier furloughed claimants, and assigned carmen mechanics to perform the work which had previously been performed by the claimants for several years. This dispute has been handled in accordance with the current agreement up to and including the highest carrier official to whom such matters may be appealed, with the result he has declined to comply with our request. The agreement effective August 1, 1945 and also The Coordination of Shreveport Terminal and Yard Facilities of The Kansas City Southern Railway Company and Louisiana & Arkansas Railway Company signed at Shreveport, Louisiana March 28, 1956 is controlling.

POSITION OF EMPLOYES: It is respectively submitted that under the provisions of Rule 92 reading:

"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,

two lists:

(1) A list showing the positions, and pertinent information with respect thereto, to be established initially in the Shreveport terminal."

During our discussion, carrier was handed a carbon copy of a 3-page document, with the request that organization be allowed to amend its claim. Carrier declined to accept such document as an amendment to the claim at that late date, and further declined to discuss the document (which was only carbon copy, unsigned and with no salutation); and the employees were at that time advised that carrier would not make such document a part of its file in this case, and would protest the organization attempting to make any use of it whatsoever in this case.

Carrier will not comment further, unless organization attempts to inject such spurious argument into its submission. In that event, carrier will take the position that same is new argument, not discussed in any way, not relevant to the issue at hand and not properly before the board.

While same has never been mentioned by the general chairman, either in conference or in correspondence (and employees therefore cannot rightfully pursue same before this board), the local chairman made mention of alleged discrimination against the carmen helpers by the carmen, with the aid of the company, in his appeals.

Such accusations are completely untrue. Carrier has never considered "getting rid of the helpers" because of any racial distinction; and if any such thoughts have "been peddled in and out of the office for the last five years," then it has been done by someone other than the carrier. We have no method of control over the thoughts and statements of the helpers or the carmen, and this appears to be an internal problem of the organization.

The rule quoted in support of the claim has certainly not been violated. The many past awards of this division have so ruled, and the organization well knows this. Their only alternative is to plead "discrimination," and this points up the weakness of the claim.

As a matter of information, all positions of carmen helpers have been dispensed with on these properties, and the predominance of such reduced positions were formerly occupied by persons other than Negroes. As a matter of fact, about the time these claimant helpers were furloughed, a large number of Caucasian carmen helpers were also furloughed at the very same terminal.

The carrier respectfully requests this board to review its previous awards as cited by carrier; and because the instant claims involve the same rules and the same subject, the board is respectfully requested to render the same decision, that the claims 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 employee or employees involved in this dispute are respectively carrier and employee 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 claim is that under the Agreement the Carrier improperly furloughed carmen helpers and assigned their work to carmen. The contention is that it was improper to assign to carmen work listed in Rule 92 as helpers' work, in this case oiling and packing, and, in consequence, to furlough carmen helpers.

The contention is that the work listed in Rule 92 belongs exclusively to carmen helpers, and thus cannot properly be assigned to carmen mechanics. Neither the Agreement nor established practice justifies that conclusion, as this Division has repeatedly held under identical or essentially similar rules and conditions.

A carman is a journeyman; i. e., "a worker who has learned a craft or trade." Webster's New International Dictionary. Certainly he is entitled to perform any work of his craft, in the absence of any express limitation or exception.

But helpers have not attained that status and cannot ordinarily be considered qualified to perform all work of the craft. It is therefore considered necessary to outline what they can do, and that is the obvious purpose of Rule 92, rather than to make it exclusively theirs, or to outline what full fledged carmen cannot do. If those further purposes had been intended, the parties could easily have declared them. But this Board cannot do so; nor can it find support for the proposition in established practice.

The Carrier alleges that until the instant claim and the companion claim in Docket No. 4457 (since disposed of by Award 4683), it had received no complaints or grievances from this committee based upon the performance by carmen of work which Rule 92 authorizes carmen helpers to perform.

The Organization does not deny the allegation, but merely says:

"In reply to this statement, the Carrier never before had abolished all helper jobs and assigned their (helper) duties to carmen at points where helpers were employed."

This constitutes an admission that the Organization has not objected to its performance by carmen at points where helpers were not employed or where helpers' positions have not been abolished. In other words, the performance of this work by carmen has not normally been protested as improper, and is protested now only because helpers have been furloughed, as the claim indicates.

Consequently, we cannot find that by established practice on this property, oilers' and packers' work has been considered helpers' work to the exclusion of carmen and carmen apprentices, or that its work by carmen violated the Agreement.

If the work is properly performed by carmen under ordinary conditions its assignment to them is not improper where helpers have been furloughed. As between classes of employees entitled to perform certain work, the Agreement does not provide which, if any, shall be furloughed, and the question is for the Carrier to decide.

The conclusion that this work does not belong solely to helpers to the exclusion of carmen, is in agreement with repeated awards of this division, i.e., Awards Nos. 1380 (without a referee), 3261, 3495, 3507, 3511, 3617, 3643, 3723, 3934, 4257, 4392, 4471, 4473, 4483, and many others.

The Employees' Submission makes the further contention, not stated in the Claim, that the Carriers' action violated the Shreveport Coordination Agreement of March 28, 1956, which provided (Section 1 (a)), that "the positions in each class in the coordinated terminal will be divided among employees of such class at the three points involved." But according to Rule 4 (d) of that agreement, it related only to "the positions to be established initially." Therefore it did not relate to permanent employment, and was not violated by furloughs five years later.

The record does not show a violation of either the current Agreement or the Coordination Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.

DISSENT OF LABOR MEMBERS TO AWARD No. 4736

Carmen helpers' work belongs to carmen helpers as they are defined in Rule 92 of the collective agreement and the work listed therein therefore belongs to carmen helpers. Under the majority's interpretation of Rule 92 the carmen helpers would be deprived of all rights. The carrier concedes that prior to the time the carmen helpers were furloughed they had performed the instant work. The carrier in subsequently assigning the carmen helpers' work to carmen violated the collective agreement.

We are at a loss to know why the majority concludes that Rule 4(d) of the Coordination Agreement of March 28, 1956 did not relate to permanent employment. There is nothing in the agreement to even imply that it would end at any specific date and thus it remains in full force and effect unless changed in accordance with the Railway Labor Act.

E. J. McDermott

C. E. Bagwell

T. E. Losey

R. E. Stenzinger

James B. Zink