

Award No. 5158
Docket No. 4895
2-GN-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Coach Cleaners were improperly assigned to Carmen Helpers positions at Jackson Street Shops, St. Paul, Minnesota;

2. That accordingly the Carrier be ordered to compensate Mississippi Street Coach Cleaners the difference between the coach cleaners and carman helpers rates of pay beginning with the dates indicated; until resolved:

- a) L. Makoweckyj - February 17, 1964
- b) Henry Sosnoski - March 2, 1964
- c) Ronald Hessler - March 2, 1964
- d) Irving P. Jones - March 14, 1964
- e) Karl Dahlberg - March 14, 1964

3. and, place them on the carman helper seniority roster at the Jackson Street shops with a seniority date as listed above.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains passenger car facilities at the point of St. Paul, Minnesota. It has a large passenger car shop, known as the Jackson Street Shops, where the heavy repairs to passenger cars are performed. It has a coach yard, known as the Mississippi Street Coach Yard, where the inspection and light repairs to the coach are performed. Each facility maintains its own separate seniority roster, but are under the supervision of the same shop superintendent. The facilities are less than one-half mile apart, within easy walking distance of one another.

3. Schedule rule 93 and paragraph (5) of the March 1, 1960 memorandum of agreement, which the organization has cited as the sole contractual basis for its claim, do not support its argument that the carrier was obligated to promote the claimants to carman helper positions at the Jackson Street Shops on the dates in question.

4. The claimants were employed at a seniority point other than the seniority point at which the carman helper vacancies existed, and the two contractual provisions in question clearly did not give them the right to demand advancement to such positions anywhere but at "their own seniority point."

5. Claimant Dahlberg was actually employed as a carman helper on the day the organization contends he should have been "promoted" to that classification. Therefore, the claim on his behalf is truly absurd.

6. There is not a single word in either of the two contractual provisions in question which even remotely substantiates the organization's "opinion" that it is the coach cleaners themselves who have the absolute power to decide whether they shall or shall not be transferred from one seniority point to another in situations like the one involved in the instant case.

7. On the contrary, the plain meaning of the language used in paragraph (5) of the March 1, 1960 memorandum of agreement clearly gives the Carrier the option of transferring or not transferring coach cleaners to seniority points where no qualified coach cleaners are eligible for advancement to carman helper positions.

8. The March 1, 1960 memorandum of agreement is not an amendment to the mechanical shopcraft schedule agreement, because it is not approved by System Federation No. 101. Therefore, it has been treated as a mere procedural agreement between the instant parties which was not intended to affect the rights of any employees other than those represented by the carmen's organization.

9. Since System Federation No. 101 has never approved the memorandum as an amendment to the mechanical shopcraft schedule agreement, under no circumstances could it be construed or treated as a limitation on the rights to promotion which Rule 12(b) of the Firemen and Oilers Schedule Agreement gives laborers on this property.

10. The organization's claim is based on an interpretation of the parties' collective bargaining agreements which is in direct conflict with universally recognized principles of contract construction.

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 employees 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.

Under Rule 93 the Carrier may assign any unskilled work to the Coach Cleaners during their period of service.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.

DISSENT OF LABOR MEMBERS TO AWARD NO. 5158

It is abundantly clear the majority ignored the real issue involved in the instant dispute when they state among other things in their findings "Under Rule 93 the carrier may assign any unskilled work to the coach cleaners during their tour of duty."

The question of assigning unskilled work to coach cleaners during their tour of duty was not an issue in the instant dispute. The evidence of record clearly reveals that the issue involved in the instant dispute is the unalienable right of coach cleaners to be promoted to carmen helpers as provided in Rule 93 and implemented by paragraph 5 of the Memorandum of Agreement dated March 1, 1960.

A perusal of the submission in this dispute will show

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and place them on the carman helper seniority roster at the Jackson Street Shops with a seniority date as listed above."

The majority in rendering a denial award in this dispute ignored the real issue giving rise to the grievance in this dispute and, therefore, the award is palpably wrong.

Oren Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger