

Award No. 5305
Docket No. 5085
2-PFE-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

RAILWAY EMPLOYEES' DEPARTMENT
A. F. of L. - C. I. O. (Carmen)

PACIFIC FRUIT EXPRESS COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the agreement effective February 1, 1963, when they unilaterally discontinued performing work of purging fuel tanks on mechanically refrigerated equipment with employes classed and rated as Carmen Mechanical Refrigerator Repairmen (CMRR), rate of pay \$2.9808 per hour, and began performing such work with employes classed as Carman I. W. at the basic rate of \$2.8768.

2. That the Carrier be ordered to assign work of purging fuel tanks with employes classed and rated as Carmen Mechanical Refrigerator Repairman.

3. That the Carrier violated Rule 11 of the Master Agreement effective March 1, 1945, revised November 1, 1951, Second revision June 1, 1963, when they required employes A. B. Latham, R. M. Chalfant and C. D. Starrett to perform work of a higher rated and paid classification (C.M.R.R.) rate \$2.9808 per hour at the basic Carman's rate \$2.8768 per hour, from January 6, 1965, to March 24, 1965, and employes A. Smaldino, C. W. Hanson, and S. S. Ferentz from March 24, 1965, thereafter.

4. That the Carrier be ordered to additionally compensate employes A. B. Latham, R. M. Chalfant, and C. D. Starrett, 10.4 cents per hour from January 6, 1965 to March 24, 1965, and employes A. Smaldino, C. W. Hanson and S. S. Ferentz from March 28, 1965, until dispute is resolved, or so long as they are required to perform the work in dispute.

EMPLOYEES' STATEMENT OF FACTS: On January 6, 1965, employes A. B. Latham, R. M. Chalfant, and C. D. Starrett, hereinafter referred to as the Claimants, held regular assignments as Carman Iron Worker at the basic rate of pay for that class, at the City of Industry shop of the Pacific Fruit Express Company, hereinafter referred to as the Carrier.

CONCLUSION

The Carrier has conclusively shown herein that the claim of the Organization in this Docket is both invalid due to procedural defect and entirely lacking in merit or Agreement support and that, if not dismissed outright, it should in all respects be denied. This Honorable Board is requested to so order.

All data herein submitted have been presented to the duly authorized representatives of the Organization and are made a part of this dispute.

The Carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the Organization in this case, to make such further answers as may be necessary in relation to all allegations and claims as may be advanced by the Organization in such submission, which can not be foreseen by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

Oral hearing is not desired by the Carrier unless requested by the Organization; however, in the event of a deadlock opportunity for oral hearing before the Division sitting with the referee is requested.

(Exhibits not reproduced.)

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 present claim rests on Petitioner's contention that Carrier violated the agreement by using lower rated Carmen instead of Carmen Mechanical Refrigerator Repairmen, hereinafter referred to as C.M.R.R., to perform the work of purging fuel tanks on mechanically refrigerated equipment.

The theory, substance and continuing nature of the claim were well defined and clear during discussions on the property and we find no merit in Carrier's procedural point, raised for the first time in Carrier's Submission to this Board, that the claim must be dismissed since it differs from that originally initiated.

The series of collective bargaining agreements that since August 16, 1954, have dealt with the subject of handling work on mechanical refrigeration equipment expressly provide that work in connection with inspecting and maintaining such equipment "will be performed by C.M.R.R." or Carmen Mechanical Refrigeration Trainees. Written instructions concerning maintenance inspections of mechanical refrigerator units issued by Carrier to its employes at various times beginning October 26, 1955, spell out in no uncertain terms that one item in such inspection procedure is the purging of water and sediment from fuel tank sump. The most recent of these instructions, so far

as the record indicates, is dated June 1, 1963, and entitled "Preventive Maintenance Schedule for Mechanical Refrigeration Units In Mechanical Cars." It lists as one of the items, the requirement that "Water and sediment must be purged from the fuel tank."

Whether or not the work is unskilled or is termed service or maintenance, it nevertheless is a compelling consideration that the Carrier has listed the duties in controversy as an item in a preventive maintenance schedule, particularly when it did so at a time when the point was not in issue. The parties' choice of terms does not appear to be unreasonable since the work in question is essential and not of a casual or purely incidental character.

These factors present a prima facie case in support of the claim that is quite strong, but subject to valid attack. There is little evidence, however, to support Carrier's position. There is no proof, for example, that as a matter of general practice employes other than C.M.R.R. have performed the disputed duties. Whether or not the work is unskilled is one of a number of considerations to weigh in determining the issues. In the present situation, in view of the agreements, written instructions and dearth of opposing evidence mentioned above, the fact that the purging task does not require skill does not, in and of itself, provide sufficient basis for Carrier's position. The purging operation appears to have been recognized and required as a separate, distinct and necessary step in the maintenance and inspection procedure. The situation presented is quite different than those considered in Awards 1000 and 2223.

The duties involved in purging fuel tanks on mechanically refrigerated equipment are part and parcel of the work content of the C.M.R.R. positions and there is no proof that any other employe classification was entitled to perform those duties.

On the basis of the record developed by the parties, the claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1967.