

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

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated Rules 15, 26, and 100 of the current agreement when they used Carmen Helpers to perform Carmen's work.
2. That accordingly, the following Carmen be compensated eight (8) hours at time and one-half (1 1/2) the Carmen freight repair rate for Carmen's work performed by the Helpers on the date claimed:

DATE OF VIOLATION	CLAIMANTS
11-10-75	B. N. Middleton
11-11-75	B. N. Middleton
11-12-75	W. M. Pridgen
11-13-75	W. M. Pridgen
11-14-75	F. D. Boyd
11-17-75	F. D. Boyd & C. G. Lockamy
11-18-75	B. N. Middleton & W. M. Pridgen
11-19-75	W. C. Harrell & R. W. Ingram
11-20-75	R. W. Ingram & C. G. Lockamy
11-21-75	W. C. Harrell & D. R. Best
11-24-75	D. R. Best & W. E. Gay
11-25-75	W. E. Gay & C.G. Lockamy
11-26-75	W. C. Harrell
11-28-75	B. N. Middleton & W. M. Pridgen
12-1-75	C. G. Lockamy & F. D. Boyd
12-2-75	B. N. Middleton & W. M. Pridgen
12-3-75	W. C. Harrell & D. R. Best
12-4-75	R. W. Ingram & F. D. R. Boyd
12-5-75	C. G. Lockamy & W. C. Harrell
12-8-75	W. M. Pridgen
12-9-75	B. N. Middleton
12-10-75	W. C. Harrell
12-11-75	R. C. Lewis
12-12-75	R. C. Lewis
12-15-75	D. R. Best & F. D. Boyd
12-16-75	C. G. Lockamy
12-17-75	R. C. Lewis & W. E. Gay
12-18-75	W. E. Gay & R. W. Ingram
12-19-75	R. W. Ingram & D. R. Best

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.

This is a claim based upon the alleged performance of Carmen's Work by Carmen's Helpers (re-wheeling cars) in violation of the agreement between the parties; Rules 15, 26 and 100.

"RULE 15 - SENIORITY AND FILLING NEW JOBS AND VACANCIES

(a) The seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following Departments:

Maintenance of Way
Maintenance of Equipment

There shall be four roster-divisions of Carmen's Craft, two roster-divisions of Machinists' Craft, two roster-divisions of Blacksmiths' Craft and four roster-divisions of Electricians' Craft, as follows:

Upholsterers
Painters
Roadway Shop Carmen
Other Carmen
Machinists
Roadway Machinists
Boilermakers
Blacksmiths
Roadway Blacksmiths
Sheet Metal Workers
Electricians
Electric Crane Operators
Linemen
Elevator Operators
Welders

"(b) Seniority lists will be posted on bulletin boards, which are provided for in this agreement, as soon as possible after January 1 each year, and will be considered permanently established if not protested during the year in which the roster is posted. Seniority dates not protested then become the fixed seniority for each man on the roster and will be carried forward to succeeding rosters. Only changes or additions as may have been made during the preceding year may be protested. Neither the Management nor the Committees will receive any complaints for correction of seniority dates which are not handled during the year in which the roster is posted. Copies of the seniority lists will be furnished the Local Chairmen and General Chairmen at the time of posting on bulletin boards.

(c) Senior men in their respective classifications shall have the opportunity to exercise their seniority when vacancies occur, or new jobs are created, or when changes in forces occur involving increased hours, higher rates of pay, or changing from night to day shifts or vice versa. Due consideration will be given men off on sick leave, vacation or leave of absence upon their return to work.

(d) When any changes according to paragraph 'c' are to be made, bulletins will be posted immediately calling for bids, such bulletins to remain open for a period of five days. Employees desiring to bid on such jobs must do so within five days' limit by making application to the Foreman in writing and give a duplicate copy of such application to the Local Chairman and failure to comply with this provision will forfeit the claim of any bidder. If no bids are received within the five day limit, the senior unassigned man will be placed on the job. Permanent assignment will be made immediately after the five day limit.

NOTE: Bids received from employees for positions advertised within the department in which employed will be accepted, provided the primary duties of the vacancy are not identical to those of the position presently held by the bidder.

(e) The practice of exercising seniority to displace junior employees by 'ROLLING' or 'BUMPING' is not permitted; however, an employee whose job is abolished, or who may be displaced by other causes, will be permitted to exercise seniority on any job occupied by a junior employee on his seniority list.

"(f) Acceptance of work at other shop points or at the same point where more than one roster is maintained between the time of layoff and being called back into the service at home seniority point, will not impair an employee's seniority standing. If an employee makes the transfer permanent he will be dated as a new man from the day he started to work at the new seniority point of employment.

(g) Permanent vacancies or new positions created at outlying points shall be filled from the seniority roster at that point under Paragraphs 'c' and 'd' of this rule. If such roster is exhausted, bulletins will be posted on the division under the jurisdiction of the Master Mechanic and filled under Paragraphs 'c' and 'd' of this rule. Men so assigned will lose their seniority at the point they leave after thirty days and their seniority at the point to which transferred.

(h) Mechanics and helpers of each craft shall have separate seniority. Helpers promoted to mechanics shall cease to hold seniority as helpers: (machinists and boilermakers craft from July 1, 1938; sheet metal workers, carmen, electricians and blacksmiths from November 11, 1940) except that mechanics, helpers and electric crane operators who prior to these dates held seniority both as mechanics, helpers and electric crane operators, will continue to hold such dual seniority and may exercise same in the event of reduction or increase in force, only at the point where such dual seniority was acquired prior to the above dates.

(i) Seniority as mentioned in any of the rules of this agreement will govern when the employees desire to exercise such rights. If sufficient ability is shown by trial, senior applicants for vacancies or new positions shall be assigned.

(j) Seniority of employees will terminate and they shall be retired from the service on the last day of the calendar month in which they attain the age of 70, or on March 1, 1968, whichever is later, and the provisions of this agreement, other than this paragraph, shall automatically terminate as to each such employee on such day."

"RULE 26 - ASSIGNMENT OF WORK

(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.

"(b) This rule does not prohibit foremen in the exercise of their duties to perform work.

(c) At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed.

(d) Helpers when used in any way in connection with mechanics' work shall in all cases work under the orders of the mechanic, both under the direction of the Foreman."

"RULE 100 - CLASSIFICATION OF WORK

(a) Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making, and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, level cars, hand cars and station trucks; building, repairing, and removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks; pipe and inspection work in connection with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, write-up men, wreck derrick engineer and firemen, safety appliance and train car repairers; all steam and mechanically operated cranes on rails, except overhead electric cranes; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work as provided in Rule 27; and all other work generally recognized as carmen's work.

(b) The above classification of work is designed to define the work of Carmen's craft, set out in Paragraph 'a', Rule 15. In consolidation of the classification of work for each class of Carmen's work in one rule, it is not the intent or purpose to change the established rate of pay of any employee."

The carrier has taken the position that it knows of no carmen's work performed by helpers and further that if such work was so performed it was not performed pursuant to the instructions of the carrier.

Various awards of this Board have upheld the contention of the organization that the work in question is Carmen's work which cannot be performed by Carmen's helpers. See awards 1486, 1273 and 6187.

The carrier and the organization have both filed statements supporting their positions, which statements were incorporated in the exhibits to the submissions. Based on a thorough review of the record, we have come to the conclusion that the organization has met the burden of showing by a preponderance of the evidence that the Carmen helpers did perform Carmen's work as alleged.

We will sustain the claim, but at the pro rata rate rather than the overtime rate.

A W A R D

Claim sustained in accordance with this opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of July, 1979.