

Award No. 1360
Docket No. MC-1237-59
2-LT-I-50

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**LOCAL UNION 2186, UNITED STEELWORKERS OF
AMERICA C. I. O.**

THE LAKE TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: M-32 represents a claim for 8 hours' pay by Mr. Horner, No. 662, machinist, because of engineman adjusting brakes on engine 1011, on April 16, 1948.

M-33 represents a claim for 8 hours' pay by Wm. Donohue, No. 684, boilermaker, because of engineman adjusting brakes on engine 1014, on April 19, 1948.

C-19 represents a claim for 8 hours' pay by Employees F. A. Zeigler and R. J. Kennedy for work performed by industry employees on April 2, 1948.

EMPLOYEES' STATEMENT OF FACTS: The company and the union have agreed to the following rule designated as Rule No. 22, which reads: "Nothing in these rules shall be construed to prevent engineers and firemen from making any necessary light repairs to locomotives in service, when such repairs will keep locomotives in service, or prevent unnecessary damage to locomotives. A locomotive will be deemed to be in service when it has left shop in charge of a crew, and has passed over Vine Street crossing."

This rule has been observed very well by the company until the occurrence which caused these grievances. The West Yard office where the engines, both Diesels, had a half-hour lay up between shifts, is only 100 feet from the roundhouse. It was during this lay up period that the engineers took a wrench and adjusted the brakes.

C-19 concerns the servicing of foreign cars by industry employees.

Foreign cars are placed by B & O on Lake Terminal Railroad tracks, which are within the confines of the National Tube Company plant at Lorrain, Ohio. The cars are placed, on many occasions, with hopper doors open and brakes set. It is because industry employees service these cars that the instant grievance has been filed.

POSITION OF EMPLOYES: Despite Rule 22, the company is in violation in these two cases. The union agrees that the engines were in service,

of this same circumstance. The instant case is not an isolated one. Since this grievance was discussed with the top officer of the company, many more instances have been reported.

It is the opinion of the union that bona-fide car-inspectors should service these cars.

The hopper doors are closed by employes of industry who have not the requisite training to detect any fault in them. In its answer to the grievance the company said "while hopper cars with doors open perhaps should not be placed for loading . . .". Hopper cars with doors open should certainly not be placed for loading, but, unfortunately they were, in the instant case, and we believe, in all fairness, car department inspectors should service them.

CARRIER'S STATEMENT OF FACTS: The cars in question were placed for the loading of iron ore on track No. 120. The air was not bled and hopper doors not closed. The industry did not order the cars out empty because of being received in this condition, but elected to bleed the air, and close the doors. They were not requested or required to do so by the carrier.

POSITION OF CARRIER: It is the position of the carrier that after the cars involved were placed for loading, our responsibility ended insofar as bleeding the air and closing the hopper doors was concerned. It was not necessary from our standpoint that the air be bled. If the industry wanted the air out of the cars, it would be up to them to release it. Also, the industry has the option of closing the doors or ordering the cars out empty. In this case they elected to close the doors.

Rule 1, Section 4, Article XIII, of the schedule agreement, effective June 19, 1945, on which the organization bases its claim reads as follows:

"Rule 1: Employees in the Car Department shall consist of carmen (inspectors and repairmen), apprentices, other craftsmen, helpers and laborers, and only carmen and apprentices shall do work generally recognized as carmen's work."

The carrier contends this rule was not violated for as stated above after placing any cars for loading our responsibility ceases until they are ordered out, and also as far as this particular rule is concerned the Division found in Award 32 that the closing of car doors could be performed by various classes of employes, including carmen, in the regular course of their duties.

For the reasons herein outlined, the carrier submits that the claim should 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 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.

The parties to said dispute were given due notice of hearing thereon.

As to claims M-32 and M-33 the record discloses that on each occasion when the engineer adjusted the brakes of his locomotive it was in service and had crossed the Vine Street Crossing. Rule 22 under Section 2 of Article XIII of the parties' agreement effective June 19, 1945, does not prohibit the engineer from doing so but is permissive thereof when the locomotive has left the shop in charge of a crew and has passed over the Vine Street crossing; provided, that what is done is in the nature of light repairs and necessary to keep the locomotive in service or to prevent unnecessary damage thereto. Under the factual situation here presented the claim is not well taken.

Claim C-19 is a monetary claim based on an alleged violation of Rule 1 under Section 4 of Article XIII of the parties' agreement effective June 19, 1945. Rule 1 is a scope rule. The basis of the claim is that the rule was violated when industrial employes performed the work of bleeding air and closing the doors of cars placed on carrier's tracks within the confines of the National Tube Company at Lorain, Ohio, for the purpose of loading them with iron ore.

Admittedly it is permissible and proper for the employes of any industry that is loading cars to bleed the air therefrom or close the doors thereof after they have been placed on its or the carrier's tracks for that purpose. In view of the foregoing the claim here made cannot be sustained.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1950.