

Award No. 1764
Docket No. 1653
2-CNO&TP-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 21, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1) That the Carrier's instructions forbidding carmen helpers (oilers) in the train yards at Cincinnati, Ohio to use blue signals is in violation of the current working agreement.

2) That the Carrier be ordered to rescind such instructions and issue instructions to use blue signals in conformity with the agreement.

EMPLOYES' STATEMENT OF FACTS: At Cincinnati, Ohio the carrier requires carmen helpers (oilers) to perform their oiling duties on cuts of cars and trains without the protection of blue flags by day and blue lights by night.

Locomotives, trains, and cars are switched into and removed from these train yards tracks at all times including the moving of cars upon which these employees are working.

This dispute has been handled repeatedly with the officers of this carrier including the carrier's highest designated officer to whom such matters are subject to being appealed with the result that this officer has declined to make any satisfactory adjustment.

The agreement effective March 1, 1926 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that there is no rule of the current agreement clothing the carrier with authority to arbitrarily revoke the provisions of the agreement as was done in this case. Furthermore, in assuming such authority, the principles of safety are ignored as well as violating general rule 55 reading in part as follows,

"No employe will be required to work under a locomotive or car without being protected by proper signals. Workmen assigned

Street without the use of blue signals which is in accordance with agreement rules, Rule 158 in particular. After journal boxes have been serviced, cuts of cars are then switched into outbound tracks where air hoses not previously coupled are coupled, visual inspection of train made and after engine is coupled to train air brake tests made by car inspectors (journeymen carmen) under protection of blue signals.

If servicing of journal boxes were to be postponed until trains are assembled, as here demanded, considerable delay would be experienced and more men would be required to service journal boxes in the shortest time possible. This would not only delay departure of the trains unnecessarily, but would require employment of more men to handle cars expeditiously.

If each time a cut of cars in a track in the classification yard were to be protected by blue signals while journal boxes were being serviced, it would prevent the classification of cars while cars in that particular track were being serviced, and would simply mean that switch engine crews would be idle while journal boxes on cars were being serviced. The entire terminal operation would be adversely affected.

Thus for carrier to be required to place blue signals at ends of cuts of cars on which journal boxes are being serviced would not only delay trains needlessly and increase operating expenses, it would create a "make-work" or "featherbedding" scheme as well.

The brotherhood should learn that the more expensive it makes the carrier's operation, the fewer job opportunities there will be left for employees it represents in this highly competitive field of transportation.

CONCLUSION

Carrier respectfully submits that:

(a) The effective agreement here in evidence does **not** entitle carman helpers (car oilers) and/or journeymen carmen (car inspectors and/or repairers) to display blue signals when servicing journal boxes on cars.

(b) Non-display of such blue signals when servicing journal boxes on cars is **not** in violation of the effective agreement.

(c) Non-use of blue signals when car journal boxes are being serviced does **not** expose carmen and/or carman helpers to the chance of injury.

(d) To permit or require display of blue signals when journal boxes on cars are being serviced would delay trains and terminal operations as a whole and would not only require employment of more men and increase operating expenses but would create a "featherbedding" or "make-work" arrangement as well.

(e) While trains or cars being "inspected or worked on" by train yardmen are protected by blue flag by day or blue light by night and employees are **not** required to work **under** locomotives or cars without the protection of proper signals, Carrier has **not** agreed and has no intention of agreeing that journeymen carmen and/or carman helpers (car oilers) are entitled to display blue signals solely for the purpose of servicing journal boxes on cars prior to dispatchment in trains.

Claim being wholly without merit, not supported by any rule contained within the four corners of the effective agreement, and being designed to create a "featherbedding" or make-work" arrangement, the Board cannot do other than make a denial award. Carrier respectfully requests that such an award be made.

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.

The question to be resolved in this case is whether or not the performance of work by carmen and carmen helpers in servicing journal boxes without the protection of a blue flag by day or a blue light by night is a violation of Rule 158, current agreement. The rule provides:

"Trains or cars while being inspected or worked on by train-yard men will be protected by a blue flag by day or a blue light by night, which shall be placed by the workmen assigned to perform the work and will not be removed except by the men required to place them."

The servicing of journal boxes by car inspectors or carmen helpers consists of adding free oil, adding or removing packing, adjusting or removing packing retainers and opening and closing the box lids at the beginning and ending of the servicing of each box. The carrier contends that the servicing of journal boxes is not within the meaning of "inspected or worked on" as those terms are used in Rule 158. The organization contends just as forcibly that it is.

The carrier asserts that Rule 158 is for the protection of employes who are required to be under, on, or pass between cars in the performance of their work. A car inspector or helper is not required to do any of these things in servicing a journal box. His work is on the ground and he performs his work without assuming the risks assumed in the inspection and repair of cars. The quoted rule has been in effect for many years. The evidence is quite conclusive that for more than thirty years the use of a blue flag by day and a blue light by night has not been used where the work of servicing journal boxes was the exclusive work being performed. We think the long practice employed is rather conclusive of the meaning intended to be given to Rule 158 by the parties. The Board has said many times that where uncertainty of meaning exists that the interpretations given to the questioned provision by the parties over the years affords a safe guide in determining what the parties had in mind when the agreement provision was made. The organization is in no position at this late date to have the provision construed more favorable to them. By their acquiescence in the application of the rule for more than thirty years they have fixed its meaning and removed any uncertainty growing out of the language used.

We are required to say, therefore, that this servicing of journal boxes by carmen and carman helpers does not come within the purview of Rule 158 and that such work may be required without the use of blue flags by day or blue lights by night.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1954.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1764

The language of Rule 158 of the controlling agreement is plain as to its meaning and is therefore not subject to construction. This Board has no authority to modify a rule which is clear and concise, therefore the award of the majority is erroneous.

The Board should have ordered the carrier to issue instructions to the claimants to use blue signals as required under the express language of Rule 158:

"Trains or cars while being . . . worked on . . . will be protected by a blue flag by day or blue light by night, which shall be placed by the workmen assigned to perform the work and will not be removed except by the men required to place them."

C. E. Goodlin
R. W. Blake
T. E. Losey
E. W. Wiesner
George Wright