Award No. 2174
Docket No. 1964
2-P&LE-TWU of A-CIO

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:

TRANSPORT WORKERS UNION OF AMERICA, C.I.O. RAILROAD DIVISION

and

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

THE LAKE ERIE AND EASTERN RAILROAD COMPANY

EMPLOYES' STATEMENT OF CLAIM: 1. That under the existing agreement the Carrier unjustly deprived Mr. J. Riscditelli of work that was previously done by him by having employes on another roster do this work. This work was done on the following days, November 13, 16, 17, 19, 22 and December 3, 1954.

2. That under the existing agreement the Carrier also deprived Mr. E. Tarquinis of work that was previously done by him by having employes on another roster doing his work. This work was done on the following days, November 13, 16, 17, 18, 19, 22 and December 3, 1954.

3. That the Carrier be ordered to compensate these two men, eight (8) hours for each day for work previously done by them but now being done by other employes.

4. That the Carrier, since they are using the tracks they claim they have discontinued to use be made to reopen said tracks and recall the aforementioned employes back to work to perform the work done by them.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties to the dispute dated, May 1, 1948, copies of which are on file with the Board, and is by reference hereto, made a part of this statement of facts.

At Monessen, Pa., the carrier did employ a group of employes known as car repairmen and also a group of employes known as car inspectors.

That each of this group are on a separate roster.

That the carrier is now using men from the car inspectors roster to do work that has been done for at least thirty (30) years by car repairmen at this point.

lateral action so alter these conditions as adversely to affect the performance by the other parties * * *."

Award 4493—Third Division

"* * * The Board has repeatedly held that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. Awards 2436, 1397 and 1257. We are obliged to say, therefore, that the Carrier could not properly modify or abrogate the practice except by negotiation."
The carrier's position may be summed up as follows:

1. Car inspectors and car repairmen are both classified as carmen and are governed by the same rules of the same agreement.

2. There is no rule in the agreement which confines any portion of carmen's work in a seniority district to either car inspectors or car repairmen.

3. It has always been our practice to have repairs of the nature here involved performed by car inspectors under similar circumstances.

It is respectfully submitted that the claims are without merit and 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.

This claim arose at Monessen, Pennsylvania, an intermediate point on carrier's road. Prior to November 5, 1954, carrier maintained shop tracks at Monessen. Two (2) car repairmen were assigned to do the repairs. On November 5, 1954, the carrier closed down the shop tracks and furloughed two (2) car repairmen, the claimants in the present dispute. It is the contention of claimants that car repairs were subsequently made at this point as before and that the work was assigned to car inspectors instead of car repairmen. Claimants demand a day's pay for each day that the work was performed by employes not on the car repairmen's roster.

Rule 50 (a), current agreement, provides for the filling of vacancies and new positions. In applying that rule, Rule 50 (f) (1) provides:

"(1) Separate rosters will be maintained for:

(a) Laborers,

(b) Material Carriers and Carmen Helpers as classified in Rule 28,

(c) Car and Air Brake Repairmen,

(d) Car Inspectors."

It is contended by claimants that as car repairmen and car inspectors are placed on separate rosters, that one group may not perform the work of the

other. This contention is advanced although the carrier's classification of work rule includes the work of car inspectors as carmen's work. Rule 27, current agreement.

It is the contention of the carrier that the amount of repair work at Monessen was so small it was not economically feasible to continue the operation of the repair tracks. The tracks were turned over to the Transportation Department and the two (2) car repairmen's positions were abolished. Repairs on cars in trains were made at this point. The record shows that cars were taken from trains and set out to be shopped, at least three (3) of which on three (3) different days were placed on the former shop tracks. The organization states that the work on cars cut out of trains has been performed by car repairmen for more than thirty (30) years and that the agreement was violated when car inspectors were directed or permitted to perform this type of work.

Some reason must exist for providing separate seniority rosters for car repairmen and car inspectors. Such action is ordinarily evidence that each is performing a different class of work which is assigned to qualified employes having seniority to perform it. We necessarily come to the conclusion that car inspectors were entitled to perform the work traditionally and usually performed by car inspectors and the car repairmen were likewise entitled to perform the work traditionally and usually performed by them. The record indicates, particularly at Monessen, that car inspectors traditionally and usually made minor repairs to cars in trains to keep them in transit. Where the nature of the repairs was such that the cars had to be set out of a train for shopping purposes it was the work of the car repairmen. We think this is what the parties had in mind when car inspectors were placed on a different roster than the car repairmen and all the evidence is considered with reference to the practices employed on this railroad. We are of the opinion therefore that carrier violated the agreement when it permitted or directed car inspectors to repair cars cut out of trains for shopping.

With reference to paragraph 4 of the claim, we conclude as follows: This Board is without authority to order the carrier to reopen shop tracks and recall car repairmen to perform car repair work. This is a prerogative of the carrier with which this Board cannot interfere. The manner of getting work done and the employes to be assigned to perform it is peculiarly the business of the carrier. To the extent that a carrier violates an agreement, this Board may remedy the wrong done to employes by an appropriate award, but it has no authority to substitute its judgment for that of the carrier in the management of the railroad.

AWARD

Claims 1, 2 and 3 sustained.

Claim 4 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July, 1956.