

Award No. 2222

Docket No. 1965

2-P&LE-TWU of A-CIO-'56

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:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, CIO**

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

and

THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That it is inconsistent with the present agreement or past practices to have or require Car Inspectors do work that has always been considered Car Repairmen work at Monessen, Pa.

2. That the Carrier be ordered to compensate the Car Inspectors eight (8) hours for each day that they did work belonging to the Car Repairmen.

3. That the following men be compensated for the following days:

(1) November 13, 1954—Car Inspectors A. Peters and G. Zeaffe

(2) November 19, 1954—Car Inspectors G. Zeffe, B. Lowe and A. Peters

(3) November 17, 22 and December 3, 1954—Car Inspector E. W. Peters

(4) November 16, 1954—Car Inspectors T. Dowler and B. Lowe.

(5) December 3, 1954—Car Inspector B. Lowe

(6) November 18, 22, 1954—Car Inspector A. Peters

4. That the Carrier, since they are using the tracks they claim they have discontinued to use be made to re-open said tracks and discontinue using Car Inspectors to do work formerly done by Car Repairmen.

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 the statement of facts.

The carrier has also used certain practices as to work done by car inspectors and car repairmen at Monessen, Pa.

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

Each group is on a separate roster.

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

That the carrier claims that the Monessen shop tracks were officially closed on November 5, 1954, and the tracks were turned over to the Transportation Department, yet the carrier is cutting cars out of trains and putting them on these tracks and then making car inspectors do the repairs which rightfully should be done by car repairmen.

The organization is asking that the carrier be ordered to pay the car inspectors eight (8) hours pay for each day for work performed by them, because rightfully this work belonged to car repairmen.

POSITION OF EMPLOYES: It is respectfully submitted that since November 5, 1954, the carrier has been violating the present agreement and practices, the agreement which specifies as to how an employee gets his seniority and that the work that was done by the car inspectors is work which must accrue to an employee who has seniority to such work.

Rule 50, Paragraph (F) was violated which we quote in part:

RULE 50

“(F)—In the application of Paragraph (A) it is understood:

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
2. Seniority of employees hired in any of the classes designated above will start from the first date service is performed in that class.
3. Employees in any of the classes (a), (b), or (c) promoted to higher class, seniority in higher class will start from the first date service is performed in such class, and they will retain and continue to accumulate seniority in the class from which promoted, and may exercise such seniority in case of a reduction of force, by displacing junior men in such class.

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. Prior to November 5, 1954, carrier maintained shop tracks at this point. Two car repairmen were assigned to make the repairs. On November 5, 1954, the carrier closed down the shop tracks and furloughed the two car repairmen. The organization contended that car repairs were made as before on specified days and that the work was assigned to car inspectors instead of car repairmen. We sustained the claim of two car repairmen for this loss of car repairmen's work in Award 2174. The present claim is brought by named car inspectors for eight (8) hours' additional pay for each day they performed work belonging to the car repairmen.

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 the claimants (car inspectors) that as car repairmen and car inspectors are placed on separate seniority rosters at this point that one group may not perform the work of the other. This contention is made although the Carman's Classification of Work Rule includes the work of inspecting all passenger and freight cars. Rule 27, current agreement.

We point out that the repairs made by the car inspectors on the yard track formerly designated as repair tracks could properly be performed by them in a train as running repairs. In other words, the violation here contended for is not in the nature of the work done but in the place where it was performed. It was done during the regular assigned hours of the car inspectors and they have been paid the car inspectors' rate for the hours they worked. They performed no work of another craft as a car inspector is a carman under applicable rules. They have lost no work; they have lost no pay and they have performed carmen's work only. We fail to see where these claimants have suffered any loss.

The organization contends, however, that a penalty is required to compel the enforcement of the agreement. We agree that it is necessary to inflict penalties to insure compliance with agreement rules. We take notice of

the fact, however, that the two repairmen deprived of the car repair work have been permitted by Award 2174 to recover compensation for the work lost. Carrier has already been required to pay twice for the same work. To require the carrier to pay the car inspectors an extra day over and above the compensation already received would clearly amount to a double penalty. The payment of the two car repairmen for the work they lost is a sufficient penalty to insure a compliance with agreement rules. Having paid one penalty for the violation, carrier will not be subjected to another. Awards 1269, 1369, 2214.

For the reasons stated, a denial award is required.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1956.