

Award No. 2824
Docket No. 2684
2-PULL-EW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Livingston Smith when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That The Pullman Company violated the current agreement when they assigned Electrician Julius Lockman to work under a car without being protected by proper signals.

2. That accordingly The Pullman Company be ordered to discontinue the practice of assigning Electrical Workers to work under cars without being protected by proper signals.

EMPLOYES' STATEMENT OF FACTS: On May 5, 1956, at about 9:50 A.M. Assistant Foreman Coleman instructed Electrician J. Lockman to inspect the underneath equipment of Pullman Car Hampdon County. At the time of this assignment Assistant Foreman Coleman was advised that the train had an engine on it and it was due to depart from the yard in about 10 to 12 minutes (Exhibit A, page 1). Assistant Foreman Coleman was also advised that it would be necessary to have the engine removed from the train before the underneath could be inspected with proper signals (Exhibit A, page 2). Even knowing that Electrician J. Lockman could not put up the proper signals and that the train had an engine on it and that it was due to leave in ten minutes, Assistant Foreman Coleman still instructed Electrician Lockman to go under the car.

As a result Electrician Lockman submitted a claim and requested a hearing which was held on June 19, 1956; a copy of this hearing record is submitted and identified as Exhibit A.

Under date of July 18, 1956, Foreman R. E. Glander, Chicago Central District, rendered a decision denying this claim. A copy of this decision is submitted and identified as Exhibit B.

The above instructions are intended for the guidance of employes who are not working under direct supervision. These instructions, however, are of a general nature and as such are subject to modification by the supervisor when circumstances are such that the supervisor finds modification necessary. It is pointed out that yard supervisors are trained in safety and are held strictly responsible for safe performance of crews under their charge.

Mr. McDermott in his letter of September 7, 1956, to Mr. Dodds, Exhibit D, alleges that Electrician D'Albero, Los Angeles District, was instructed by a Pullman inspector to perform work without "derails" under a car on the night of July 30-31, 1947, and charges that for so doing D'Albero was given a hearing and disciplined. Although it is a fact that Electrician D'Albero was given a hearing for working under a car without "derails," the discipline was assessed on the basis that the Pullman inspector was not aware that D'Albero was so working and no other protection was afforded. (See Mr. C. M. Fitzgerald's letter of decision dated October 7, 1947, which letter is submitted as Exhibit I.) Thus, the case of Electrician D'Albero differs from the case of Electrician Lockman since Lockman's supervisor was aware that "derails" were not in place and took adequate precautions to protect Lockman.

CONCLUSION

The Pullman Company has long recognized the need to employ proper and adequate safeguards to protect employes while working under a car and in its ex parte submission has shown that Electrician Lockman was protected by proper signals as contemplated by Rule 61 while performing the work in question. The grievance of Electrician Lockman is, therefore, 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.

Claim is here made that the terms of the effective agreement were violated when claimant Julius Lockman was allegedly improperly required to work under a car without the protection of proper signals.

The record indicates that the work in question concerned the inspection of equipment of a Pullman car prior to departure. The organization relies on that portion of Rule 61 which provides:

"Rule 61. Protection of Employes. * * * No employe shall be required to work under a car without being protected by proper signals. Where the nature of the work requires and necessary arrangements can be made, passenger cars will be placed over a pit. * * *"

The carrier promulgated and caused to be issued certain rules or instructions pertaining to the protection and safety of employes whose duties re-

quired their (duties) performance under trains; said rules or instructions provide in part:

"All employes who have occasion to go under cars for any reason must apply derail and blue flags. This also applies to employes working on roofs or on ladders on sides of cars and is handled according to practice authorized by local railroad official."

It is well settled by prior awards of this Board that any failure on the part of an employe to obey and/or comply with rules or instructions may make such employe a proper subject for discipline.

In order that employes who were required to work underneath a car might at all times be cognizant that safety was a factor in proper job performance, the carrier issued the above instructions concerning steps to be taken for the protection and safety of employes whose duties required them to work underneath trains.

The record indicates that the employe in question, upon being instructed to make this inspection, requested that the engine be uncoupled and moved forward so that derails and blue flags could be applied. The record further indicates that the foreman gave instructions to the air brakeman, engineer and yardmaster that this train was not to be moved until and unless he (foreman) released his "hold" thereon.

The respondent takes the position that by issuing these instructions the foreman had provided claimant adequate protection and that the application of derails and blue flags was unnecessary.

The question to be resolved here is whether or not the employe in question was required to work underneath a car without being protected by the proper signals. We are of the opinion that he was so required. Proper protection has been defined by the carrier under the above instructions relating to the protection and safety of employes, as the application of derails and blue flags in all instances where presence underneath a car is required. In this instance the protection required was not furnished.

A carrier has the right to unilaterally promulgate and issue any safety rule, regulation or instruction which does not vitiate any rule of the agreement. It is apparent that the above rule or instruction properly comes within this category. While it is the function of management to determine the extent and nature of these rules, we are of the opinion that they cannot properly be vacated, amended or modified as an expedience of supervision, as was done here. The above quoted instructions had been promulgated and issued but never rescinded or modified by the carrier, so therefore we are of the opinion that under the facts and circumstances of this record the employe in question was not protected by proper signals.

AWARD

Claims disposed of as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April, 1958.