

Award No. 2881
Docket No. 2744
2-DS-TWUOA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
(Railroad Division)

DONORA SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That it is in violation of the present agreement, Article 2, paragraph (m) for the carrier to promote an employee on the property to do a job that is not part of any regular assignment when there are employees available and are off on the days in question and are regular assigned employees to do this type of work.

That Mr. Evo Renacci is a regular assigned car inspector and that he was off on his rest days on January 11 and 25, 1957 and should have been the employee to do the work done by Mr. Craig.

That Mr. Evo Renacci be compensated as asked for in his original claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. Evo Renacci is an employee of the Donora Southern Railroad Company, Maintenance of Equipment Department and holds a regular position of car inspector.

That Mr. Evo Renacci was off on January 11 and 25, 1957 and was available for the work performed by Mr. Craig.

That the carrier did create an extra job that was filled by Mr. Craig instead of Mr. Renacci.

That under the present agreement it was wrong for the carrier to assign Mr. Craig as car inspector for January 11 and 25, 1957 as he did not hold a regular assignment as car inspector.

That Article 2, paragraph (m) of the present agreement was violated.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective August 29, 1949 and revised

POSITION OF CARRIER: The claimant asserts that on each of the dates in question he was entitled to fill a car inspector's vacancy in the blast furnace yard. The fact is that there was no vacancy. On each date there was only one position of car inspector at that point, and in each case it was properly advertised, awarded to, and filled by the senior qualified applicant. The function of Mr. Craig on each date was not that of a car inspector. He merely accompanied the incumbents, not to qualify them nor to assist them in performance of inspectors' work, but only to acquaint them with the physical characteristics and sequence of work at that point. Accordingly, it is carrier's position that there was no car inspector's vacancy to be filled, and that, therefore, Article 10(a) has no application.

Even if it were considered that the service performed by Mr. Craig on the dates in question constituted the filling of a car inspector's vacancy, which carrier emphatically denies, it necessarily could amount to no more than a "temporary vacancy" under the third paragraph of Article 10(a). Since Mr. Mendicino, the senior car inspector, was regularly assigned on that turn as a car inspector, it follows that Mr. Craig, the next senior car inspector, was "* * * the oldest man on the property on the turn in question holding rights in that occupation but not working in same, * * *" and accordingly, he was the proper man to be assigned for the day.

For the foregoing reasons, it is respectfully submitted that this claim must 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 employee or employees involved in this dispute are respectively carrier and employee 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 facts are undisputed in this docket. On claim dates an experienced car inspector was on his first day of a new assignment. The company assigned a car repairman to accompany the new man on his first rounds to acquaint him with locations, the sequence of work and physical characteristics of the job.

The union now claims that this action violated Article 2(m) which holds that—

"Where work is required . . . which is not a part of any assignment, it will be performed by a regular employee."

The union has not shown any proof that Craig did any car inspector's work.

It is urged that because Craig admittedly accompanied the inspector, that he must have been doing an inspector's work and therefore that this was a second job of inspector to which the claimant is entitled. We cannot accept this conclusion in the face of the carrier's showing that Craig was only used as a guide and "was not used to work as a car inspector." Mr. Craig's function did not violate Article 2(m) because no work was required.

AWARD

Claim of employees denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June, 1958.