

Award No. 3091

Docket No. 2860

2-BS-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when award was rendered.

PARTIES TO DISPUTE:

**BROTHERHOOD RAILWAY CARMEN OF AMERICA—
RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O.
(Carmen)**

BIRMINGHAM SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the Carrier improperly abolished Car Inspectors positions, and assigned Switchmen to couple hose, make brake inspection test and inspect and report defective cars.

2. That the Carrier be ordered to:

(a) Reestablish Car Inspectors position at Bessemer, Alabama, Yard, 7:00 A. M. to 3:00 P. M., Monday through Friday.

Reestablish Car Inspectors position at Birmingham Yard, 11:00 P. M. to 7:00 A. M. seven days a week. Establish additional Car Inspectors positions at other yards on Carrier's property, (namely: Ensley, Fairfield, East Thomas and Delonah) or call Carmen from the Car Inspectors overtime board to perform Carmen's work, now being performed by Switchmen.

(b) Make the employes of the Carmen's Craft whole by additionally compensating the Car Inspectors, (namely: W. W. Wooley, O. G. Huffman, J. M. Glenn, Lloyd Teer, O. F. Harris, S. A. Carter, Melvin Tipton, E. C. Martin, C. E. McIlwain, J. D. Norton, W. T. Porter, T. G. Sullivan, H. A. Frederick, C. S. Norton, T. W. Hyche, C. B. Ivey, E. L. Youngblood, Lealus Ballard, R. A. Stevens, W. B. Barton, D. T. Dye, A. B. Payne, Jr., C. E. Yeager, J. R. Vance, J. W. Crowder, H. M. Lytle, P. H. Peterson, Norman Brown, Perry Galemore and C W. Guthrie) for five hours' pay August 27, 1956, and each subsequent day Monday through Friday for the 7:00 A. M. to 3:00 P. M. shift at the Carrier's Bessemer Yard, and five hours'

the Coupling Function is, and for many years has been, an established fact, usually without the payment of any arbitrary. Likewise, at many other points where carmen are employed during only a portion of the calendar day, when they are not on duty, trainmen and yardmen perform the Coupling Function, usually without additional compensation."

The referee also pointed out that any formal agreement between the Brotherhood of Railway Trainmen and the Brotherhood of Railway Carmen awarding the coupling function exclusively to carmen was "conspicuous by its absence" (Page 22 of the Award). After rejecting the contention of the brotherhood that the coupling function belonged exclusively to the carmen, the referee then handed down his decision to the effect that a new rule should be drafted eliminating any prohibition or restriction, restricting the use of yardmen in coupling or uncoupling air, and provided for a maximum of 95-cent arbitrary where rules require payment for such work when performed by yardmen under certain circumstances.

The carrier submits that this award substantiates its position and is in accord with the long-standing practice on this property that the coupling function is not the exclusive work of the carmen.

Reference is also made to the case of **Shipley v. Pittsburgh & Lake Erie Railroad Co.**, 83 F. Supp. 722, as an additional authority substantiating the carrier's position that the coupling of air hose is generally considered the duty of both trainmen and car inspectors and is not the exclusive duty of the carmen. The court made this specific finding of fact in regard to the operations of the carrier in question, after a lengthy discussion of the complete history of the coupling function and of the development of both trainmen and carmen rules concerning the same.

We believe that the above awards and decisions sufficiently demonstrate the correctness of the carrier's position without further discussion or citation of other Board decisions.

CONCLUSION

It is, therefore, the carrier's position that there is no merit in the claims of the employes and that they should be denied, in view of the practice of long standing on this property that the functions of coupling air hose and testing air have not been assigned exclusively to any craft or class of employes on this railroad, and in view of the fact that there is no provision or rule in the current agreement between the parties to the contrary, and since the switchmen do not perform any inspection work which properly belongs exclusively to the carmen.

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.

Parties to said dispute were given due notice of hearing thereon.

The claimants contend that under the current agreement the Carrier improperly abolished car inspector positions, and assigned switchmen to couple hose, make a brake inspection test and report defective cars. It is undisputed that the switchmen did couple hose and make an airbrake test. The switchmen have been doing that for many years. In fact, they have received an arbitrary for it since October 16, 1951.

This question has been before this Board many times. In Award 2253 of this Division it was stated:

“This Board has held many times that coupling and uncoupling of air hose may be performed by more than one craft. It is the exclusive work of carmen, in the absence of specific agreement, when it is performed in connection with and incidental to their regular duties of inspection and repair. * * * Where the work is done in connection with switching operations, the carrier may properly assign the work to switchmen.”

Award No. 1626 of this Division is to the same effect.

Switchmen did the work here complained of on this railroad at the Birmingham and Bessemer yards for two years before a claim was ever filed.

The claimants insist in their rebuttal that coupling of hose and airbrake tests by the switchmen was in connection with inspecting cars. The record does not bear out this contention and so the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3091

The statement in the findings to the effect that switchmen have been coupling hose and making airbrake tests for many years is untrue as will be seen by referring to Employes' Exhibit A, a letter addressed to the carrier by the Chairman of the Switchmen, wherein it is stated that prior to 1955 the instant work had been performed by car inspectors for more than a quarter of a century. The letter also states that the switchmen are not seeking the work.

If, as stated in the findings, the “Switchmen did the work here complained of on this railroad at the Birmingham and Bessemer yards for two years before a claim was ever filed,” it was for the reason that the carrier had falsely assured the carmen's Local Committee that switchmen were not performing the work formerly performed by car inspectors. When switchmen informed the carmen in 1956 that switchmen were being required to do the work the instant claim was filed.

The majority attempts to justify its erroneous conclusions by basing the findings upon awards which were made in reference to disputes between other railroads and their employes. The record (Employes' Exhibits B and C) substantiates the employes' contention that the instant coupling of hose and making of airbrake tests by the switchmen is in connection with inspecting cars. Thus the record and the controlling agreement effective June 1, 1943, as subsequently amended by the duly accredited representatives of this carrier and its employes in the carmen's craft, stand as a protest against the instant findings and award which ignore both the agreement and the record.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner