

Award No. 3192

Docket No. 2962

2-NYC-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier is improperly and in violation of Rule 163 denying Carmen in train yards the right to use blue flags by day and blue lights by night.

2. That, accordingly, the Carrier be ordered to issue instructions permitting Carmen in train yards to use and display blue flags and blue lights in conformity with the agreement.

EMPLOYES' STATEMENT OF FACTS: On February 9, 1956, the New York Central System, hereinafter referred to as the carrier, began using the Nottingham Train Yards, Cleveland, Ohio, to inspect fast freight trains commonly called "early bird trains".

Car inspectors are employed on all three (3) shifts, 7:00 A. M. to 3:00 P. M., 3:00 P. M. to 11:00 P. M., and 11:00 P. M. to 7:00 A. M., in the Nottingham Yards. Four car inspectors are assigned to inspect each of these trains, one head end inspector who starts at the head end of the train, one head end middle inspector, one rear middle inspector and one rear end inspector who starts at the rear end, when through with their inspection the head end inspector finishes at the head end and the rear end inspector at the rear end.

The car inspectors have been instructed by carrier officers not to use blue flags or blue lights while working on or around the so-called "early bird trains", however, when the Interstate Commerce Commission inspector is known to be in Nottingham Yard, the foreman, in charge,

AWARD

"Claim disposed of as per findings."

Again, in this award, this Division has in effect endorsed as proper a practice which even involved a certain degree of physical contact.

The practice proposed under the claim in the instant dispute is unsupported by agreement and would have the effect of merely delaying trains unnecessarily by requiring employes to perform an act which has been shown by the carrier to be meaningless and unnecessary and not contemplated by agreement. The claim is completely without merit and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that: 1

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. 2

This Division of the Adjustment Board has jurisdiction over the dispute involved herein. 3

Parties to said dispute were given due notice of hearing thereon. 4

On November 17, 1954, the carrier inaugurated an accelerated inspection of "Early Bird Trains" at Collinwood, which was performed on a running track with road engine attached, unless detached because defective, and without blue flag or blue light protection. The inspectors were instructed not to go on, under or between cars without reporting to the supervisor to obtain protection. In 1955 a claim was made that such action was a violation of Rule 163. The carrier made final denial of that claim on December 20, 1955 and it was not progressed further. 5

Commencing February 9, 1956, the carrier started having the same inspection made at Nottingham Train Yard instead of Collinwood. This claim was thereafter filed. The rules contain no provision which bars this claim because of failure to progress the prior claim to this Division. 6

It is obvious that some types of train inspection are not subject to Rule 163, e. g., passenger train inspection in stations with the engine attached and brakes set. To the extent that these Early Bird Train Inspections are similarly performed there is no violation of the rule. When engine is detached we find that the rule applies and blue flag or blue light protection must be afforded. 7

AWARD

Claim disposed of in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1959.