

Award No. 3483

Docket No. 3000

2-MP-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY — GULF DISTRICT

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the provisions of the controlling agreement, particularly Rule 109 thereof, when it assigned trainmen to make brake inspection on trains departing from Mission, Texas.
2. That accordingly, the Carrier be ordered to compensate the Carmen listed below for the number of hours listed under their names on the dates shown at the straight time rate. Also that the Carmen listed below be paid a four (4) hour call, time to be equally divided among them, for each train that has departed from Mission, Texas since April 26, 1957, and which shall depart from Mission, Texas until such time as the practice of having trainmen make brake inspections is discontinued:

1 — J. Garrie

April 20, 1957 — 16 hours

April 21, 1957 — 4 hours

April 22, 1957 — 4 hours

April 23, 1957 — 8 hours

April 24, 1957 — 4 hours

April 25, 1957 — 8 hours

April 26, 1957 — 4 hours

2 — Juan Flores

April 22, 1957 — 8 hours

3 — Alejandro Flores

April 23, 1957 — 8 hours

4 — C. R. Swim

April 24, 1957 — 8 hours

5 — G. G. Gonzalez

April 25, 1957 — 8 hours

6 — Julio Flores

April 26, 1957 — 8 hours

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as carrier, has always maintained inspection forces at Mission, Texas composed of various numbers of carmen. Among the many duties of these carmen was the making of brake tests, which includes the inspection of all braking equipment on all cars, in all trains leaving Mission, Texas, a terminal where trains are switched and made up.

On April 18, 1957 General Notice No. 54, was posted by Superintendent Judd advising all train and enginemen that effective at 12:01 A. M. Saturday, April 20, 1957, car forces at Mission, Texas would be discontinued and that after that date train and engine crews would make their own brake tests at Mission, Texas.

On April 19, 1957, the last position held by car inspectors at Mission, Texas was abolished and train crews immediately began performing the work of making inspection to train brakes on all trains leaving Mission, Texas, including the repairing of such cars as were found defective during such inspection of braking and other equipment on cars.

Carmen J. Garrie, Juan Flores, Alejandro Flores, C. R. Swim, G. G. Gonzalez and Julio Flores hereinafter referred to as the claimants, are regularly employed as carmen by the carrier at Harlingen, Texas the nearest point to Mission, Texas where carmen are regularly employed.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that in the making of air brake tests there is of necessity work of inspection involved and that such inspection work involving freight and passenger equipment is contractually carmen's work under the provisions of Rule 20, which reads in pertinent part:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft,"

and Rule 109, reading in pertinent part:

"Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel; * * * and all other work generally recognized as carmen's work."

as the above referred to rules contract without question all work of inspecting freight and passenger equipment to carmen, including air brake test.

Nebraska. We quote the following from the findings of the Board in that case which denied the claim:

"The carman's job was discontinued prior to the dates for which pay is claimed. There is neither claim or showing that such discontinuance was an evasive tactic or intended to vitiate the rules. There being no carmen employed and on duty the rules depended upon have no present application."

Award 16884 covered claim of a conductor and crew for a day's pay on various dates when car inspectors' work was required of the crew. We are quoting below from the findings of the Board in that case which denied the claim:

"The Carrier, properly exercising a managerial function in the light of changed circumstances, discontinued all positions of car repairers and inspectors at Wendover.

The claims in this docket are for work days subsequent to such discontinuance and are predicated upon Rule 70 of the conductors' agreement:

'Rule 70. Coupling Air Hose. At all terminals where car inspectors are on duty air, steam or signal hose shall be coupled and air tested by car inspectors.'

The rule is clear. It says '. . . Where car inspectors are on duty' and not where car inspectors FORMERLY were on duty. No car inspectors were on duty at Wendover on the dates in question and the work performed by the conductor and crew was therefore incidental to their assignment."

To the same effect are First Division Awards 2071, 5793, 3795, 6532, 12318, 12319.

It is clearly evident from the foregoing record that the employees' claim in this case is without basis under the agreement, and that carrier's position is fully and abundantly supported by the several awards cited hereinabove. Therefore, the contention and claim of the employees should, consistent with previous awards rendered by your Board, 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 employees 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.

The work of making brake inspections on trains is not exclusively the work of carmen on this property. The facts and circumstances shown of record fail to support the alleged violation of Rule 20 or Rule 109.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois this 21st day of June 1960.

DISSENT OF LABOR MEMBERS TO AWARD No. 3483

The conclusion of the majority that "the work of making brake inspections on trains is not exclusively the work of carmen on this property" is confuted by Rule 109 of the governing agreement, which rule specifically states that "Carmen's work shall consist of . . . inspecting all passenger and freight cars . . ."

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink