

Award No. 3521

Docket No. 3338

2-ACL-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone, when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That, under the controlling Agreement, inspecting, classifying, and/or applying commodity tags to empty cars for commodity loading is Carmen's (car inspectors') work.

(b) That Carrier be ordered to discontinue the use of other than Carmen (car inspectors) to perform this work, and

(c) That, accordingly, Carrier be ordered to compensate the employees (car inspectors) listed in Exhibit "A" and in the amount claimed.

EMPLOYEES' STATEMENT OF FACTS: On June 21, 1957, a transportation department employee, Mr. J. Moore, supervisor of freight car cleaners, inspected and classified 67 cars located on the north end of the long lead and south end of track No. 6 in Winston (Lakeland, Florida) inspection and classification yard. In lieu of actually applying appropriate commodity card, Mr. Moore marked classification on the side of each car and in addition made a list of all cars inspected, giving the initial, number, kind and classification made. An example of record made by Mr. Moore which is taken from list prepared by him follows:

"Track—North End Long Lead

Date—6/21/57

Initial	Number	Kind	Classification
CG	17842	G	OK
ACL	90583	G	C/O
ACL	91949	G	No gd
MP	11288	G	OK
NYC	711429	G	OK

compensation is without foundation in that the work claimed is not granted to them by agreement. Carrier respectfully requests this Board to deny the claim in its entirety.

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.

Under Special Rule 402 (a) inspecting freight cars is carmen's work, and, subject to exceptions not here relied on, Section 27 provides that only mechanics and apprentices regularly employed as such will do the work. Inspection is a necessary basis of classification and commodity tagging. The first booklet of instructions when commodity tags came into use provided that commodity cards must be placed on all empty cars by car inspectors, and the current car inspectors' written examination sets out as the general duty of a car inspector "To make inspection of all cars, * * * to classify cars for loading of suitable commodity" and "Apply commodity tags to cars according to classification."

The permitted exceptions, other than those mentioned in Section 27, which appear to have been accepted by the Organization, are those set out in Transportation Department Circular No. 458, permitting agents to make inspections for commodity use at stations where there are no inspectors, and for the local freight conductors to make such inspections at non-agency stations. At such points they are not permitted to attach commodity tags to the cars but only to make certificates of inspection on prescribed form 278 to be filed by the agent or at the next agency.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1960.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3521

The work involved subject to dispute in this docket is the classifying and/or tagging of freight cars for commodity loading.

Rule 402(a), referred to but not quoted in the Findings, is the classification of work rule of carmen. That rule does not, by implication or otherwise, grant to car inspectors the exclusive right to classify and/or tag cars for commodity loading. The record shows, uncontrovertedly, that throughout the years, at least for thirty to thirty-five years, other than car inspectors have classified and tagged cars for commodity loading on this carrier. This was further emphasized in the hearing of the case before the Division with the referee present. The instructions issued by the Carrier to car inspectors, relied upon by the Employes and apparently the basis for the conclusion of the majority, apply

only when cars are mechanically inspected by car inspectors. Those instructions mean simply that car inspectors are to classify and tag empty box cars when inspected. At other times others may classify and tag the cars. This has been the recognized practice through the years.

It is not denied that car inspectors have at times classified and tagged cars for commodity loading. Likewise, it cannot be denied that throughout the years other than carmen have also classified and tagged cars for commodity loading. There has been no restriction on other than car inspectors performing this service. No mechanical inspection of the cars is involved in the classifying and tagging of cars for commodity loading.

Under Section 3, First (i), of the Railway Labor Act, the authority of the Adjustment Board is limited to deciding disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions ****." The Division is, therefore, without authority to do what paragraph (b) of the claim demands. The Division cannot undertake to direct how the Carrier is to have work performed.

The award is erroneous, and we dissent.

P. C. Carter

D. S. Dugan

H. K. Hagerman

D. H. Hicks

M. E. Somerlott