

Award No. 3522

Docket No. 3346

2-C&O-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. 41, RAILWAY EMPLOYEES'
DEPARTMENT — A. F. L. - C. I. O. (Carmen)**

**CHESAPEAKE AND OHIO RAILWAY COMPANY
(SOUTHERN REGION AND HOOKING DIVISION)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when other than Carmen were assigned to inspect air brake equipment for length of piston travel on freight cars in Westbound Manifest Yard, Chesapeake and Ohio Railway Company, Russell, Kentucky.

2. That accordingly the Carrier be order to compensate Carmen L. H. Carter, Walter Franz, C. D. McKenzie, E. J. Noble and Harry Trent for 8 hours at time and one-half rate December 6, 7, 8, 9, 10, respectively, for the violation.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, employs carmen at Russell, Kentucky; among them were L. H. Carter, Walter Franz, C. D. McKenzie, E. J. Noble and Harry Trent, hereinafter referred to as the claimants.

The carrier, effective December 2, 1957, established three carmen positions, two on the first shift and one on the third shift, and assigned thereto three carmen whose duties consisted principally of inspecting air brake equipment for length of piston travel and adjusting air brakes so as to length or shorten the piston travel, if as a result of the inspection, an adjustment was required.

On December 6, 7, 8, 9, and 10, 1957, a foreman was assigned on the first shift to perform the work of inspecting air brakes for length of piston travel.

This dispute was handled on up to and including the vice-president-labor relations, by the general chairman, as evidenced by his letter dated January 20, 1958.

The carrier's highest officer authorized to handle grievances, declined the claim, as evidenced by his letter dated March 14, 1958.

the work was accomplished on each date during the period December 2 to 13 in the same manner.

The employees claim that carrier has violated Rule 32 and Rule 154 of the agreement. In citing Rule 32, the employees quote Paragraph (a) of the rule, but ignore the specific provisions of Paragraph (b). Rule 32 (b) is clear and unambiguous. This rule does not prohibit foremen from performing work, but to the contrary actually makes specific provisions to permit foremen to perform work in the exercise of their duties. There can be no question but the measuring of piston travel as done by the foreman on the dates of claim was strictly in the exercise of his duties as a foreman.

It has been shown that in some instances during the period covered by the special report, carmen made the measurements and the foreman later followed, taking the information for the special report from cars on which the carmen had marked the piston travel. Whether the foreman went ahead of the carmen or behind the carmen is not material since the work performed by the foreman was in the exercise of his duties as a foreman and was used in compiling data for the special report.

It cannot be argued by the employees that the measuring of piston travel by the foreman resulted in a lesser number of carmen being worked on any date for which claim is made. There were sufficient carmen already on duty to have made any necessary measurements had the foreman been prohibited from such measuring under agreement rules, which he was not. Even had the carmen performed all of the measuring during the period in question, no increase in force would have been made.

The employees also cite Rule 154 of the current agreement as being violated by the carrier. Rule 154 makes no specific reference to the measuring of piston travel on cars, but does assign to carmen the inspection of air-brake equipment. Carmen made the regular inspection of the cars, including the inspection of air-brake equipment. They were not relieved from the duty of checking the brake piston travel, which is one of the requirements of the regular inspection. In the cases where the foreman had gone ahead, it is quite probable that they did not make any measurements, however, they were not relieved of their responsibility either by actual or implied instructions. The carmen making the regular inspection could check the piston travel and make necessary measurements in questionable cases during the regular inspection with little, if any, additional time required thereby.

The measuring of piston travel, as done by the foreman in the instant case, cannot be considered as work accruing exclusively to the carman craft. General car foreman, general car inspectors, master mechanics, general master mechanics, etc., regularly check behind those under their supervision to insure proper performance of work and compliance with existing rules and regulations. The files of the carrier contain many reports made by general car inspectors, general master mechanics, etc., concerning irregularities observed, including improper piston travel on cars checked by other than carmen. The employees have never previously taken exception to such measurements being made by supervision.

The measuring of piston travel, as done by the foreman in this case, has long been recognized by the employees as one of the requirements necessary in the exercise of supervision.

Carrier submits that there is no justification in the claim of the employees and urges that it 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 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 work performed by the foreman and here complained of did not consist of checking behind those under his supervision to insure proper performance of their work, nor only of obtaining information as to the number of cars operating with improper piston travel and the place and date of last inspection of such cars. Admittedly during the period for which claim is made the foreman on the first shift in most instances went ahead of the carmen, measured the length of piston travel and noted on the side of the car any necessary brake adjustment. This was carmen's work.

However, so far as appears, this was a duplicate rather than an absorption of the carmen's work, performed to obtain information for a special report. The carmen were not relieved of their responsibility or duty for inspection and repair. Three carmen's positions had been established for the purpose of making this inspection and adjustment of the air brake equipment and it is not asserted nor does it appear that any increase in force would have been required had the foreman not participated as he did in the inspection.

AWARD

Claim (1) sustained; Claim (2) denied as per findings.

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.