

Award No. 3552
Docket No. 3507
2-P&LE-TWUA-'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:

TRANSPORT WORKERS UNION OF AMERICA
(Railroad Division) A. F. of L. - C. I. O.

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY
AND THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: On June 7, 1958, two (2) regular assigned carmen on second trick were taken out of the shop and put to work in the yard inspecting cars.

There are regular assigned car inspectors at this point and if there is any inspection work that has to be done at this point it should be done by car inspectors.

This case is similar to Case Y-16 which had been presented to the Board and the Carrier asked the Organization to withdraw this case and paid the claim.

The work done by the carmen should have done by car inspectors Ripple and Allen.

Since this was not done the Organization requests the Carrier to compensate car inspectors Ripple and Allen eight (8) hours at the punitive rate of pay for June 7, 1958, due to two car shop men performing the work of car inspectors.

EMPLOYEES STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-106.

That although there is one common roster for carmen and car inspectors at this point the jobs are advertised separately and so awarded. That the men who bid shop jobs are awarded the shop jobs and those who bid yard jobs are awarded the yard jobs.

That Car Inspectors Ripple and Allen were available for the work performed by the carmen.

That a similar case known as Case Y-16 had been handled with the carrier and then processed to the Board and then it was withdrawn from the Board because the carrier agreed to pay the claims as presented by the organization.

SECOND DIVISION:

Award 2565: " * * * It does not appear that any other rule limits the rights of the carrier to decide those matters and, since such right is inherent in carrier's right to direct the working force as limited by the rules, the contention of the employees must be denied."

THIRD DIVISION:

Award 8218: "It is axiomatic that the Carrier has all management prerogatives not relinquished by Rules Agreements."

FOURTH DIVISION:

Award 1225: "It is well established that the Board is limited to an interpretation of the terms and conditions of the applicable agreement and that so long as its provisions are clear and explicit we may not vary or modify them by implication. It is also well established that to the extent the contract does not expressly limit or restrict management's right and prerogatives, it is free to exercise fully the usual and customary managerial functions."

An affirmative award in this case would be in direct contradiction to these rulings of the National Railroad Adjustment Board.

CONCLUSION:

The carrier's position may be summed up as follows:

1. Car Inspectors and Car Repairmen are both classified as carmen under Rule 25 of the carmen's agreement and are governed by the same rules of the same agreement.

2. In the Youngstown Seniority District car inspectors and car repairmen are combined on one common seniority roster .

3. A previously settled case, relied upon by the organization is not similar to the instant case and does not support the contention of the organization.

4. The work involved herein is carmen's work and was performed by a carman.

5. Award No. 2174, wherein the claim of the employees was sustained on the basis that separate rosters for repairmen and inspectors were in effect, certainly establishes a precedent for a denial of this claim where repairmen and inspectors are on a single roster and may be used interchangeably.

6. Awards of the Four Divisions of the National Railroad Adjustment Board support Carrier's position.

The carrier respectfully submits that the claim is without merit and therefore must 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.

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

Two regularly assigned carmen after reporting for duty were taken from their assignments in the shop and used in the yard for a time to perform inspection work, then returned to the shop where they completed their assignment.

In the Youngstown Seniority District carmen and car inspectors are carried on the same roster and under the Classification of Work Rule carmen's work includes car inspection. However, car repairmen jobs and car inspector jobs are separately advertised and awarded and to hold that they may be used interchangeably would nullify the seniority right to bid on the type of work preferred. Without disputing this, Carrier contends that the repairman could permissibly be used for inspection as here done during part of his tour of duty.

It may well be, as held in Award 1440, that there are jobs the primary function of which is car inspector but which may be used on repair work when not needed on inspection, and jobs the primary function of which is repairs but which may be used when necessary for inspection. If so, as also there held, such jobs should be so advertised that they may be identifiable for purpose of exercising seniority. They were not so advertised in the case before us.

Claimant's pay for the work lost should be at the straight time rate.

AWARD

Claim sustained at straight time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1960.