Award No. 3755

Docket No. 3397

2-DM&IR-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 71, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the controlling agreement the work of inspecting cars on Track No. 36, Rices' Point Yard of the Northern Pacific Railway, Duluth, Minnesota, belongs to carmen employed on the Iron Division of the carrier.

2. That accordingly the carrier be ordered to compensate each of the carmen named below in the amount of eight hours at the time and one-half rate for each of the dates following their names:

H. S. Stott—September 9, 10, 11, 12, 13, 1957; October 16, 17, 18, 19, 21, 22, 23, 24, 1957.

R. G. Tormondsen—September 14, 16, 17, 18, 1957; October 25, 26, 28, 29, 30, 31, 1957; November 1, 2, 1957.

Carrol G. Flake—September 19, 20, 21, 23, 24, 1957.

Albert H. Hanke—September 25, 26, 27, 28, 1957.

J. R. Carlson—September 30, 1957; October 1, 2, 3, 4, 1957; November 4, 5, 6, 7, 8, 9, 11, 12, 1957.

M. A. Rapatz—October 5, 7, 8, 9, 1957.

Robert Alnes—October 10, 11, 12, 14, 15, 1957; November 13, 14, 15, 16, 18, 19, 20, 21, 1957.

H. W. Stanley—November 22, 23, 25, 26, 27, 29, 30, 1957; December 2, 1957.

W. J. Johnson—December 3, 4, 5, 6, 7, 9, 10, 11, 1957

3. That the carrier be ordered to compensate carmen (names to be furnished following final determination) in the amount of eight hours at the time

and one-half rate for each day subsequent to December 11, 1957 that other than carmen employed on the Iron Range Division were or are used to inspect cars on Track No. 36, Rices' Point Yard.

EMPLOYES' STATEMENT OF FACTS: Prior to September 9, 1957, carmen employed on the Iron Range Division had been assigned, exclusively, to inspect cars on Track No. 36, Rices' Point Yard, which is the designated interchange track for cars delivered to the Iron Range Division of the carrier. Likewise, Track No. 37, Rices' Point Yard, is the designated interchange track for cars delivered to the Missabe Division and prior to September 9, 1957, carmen employed on that Division had been assigned, exclusively, to inspect cars on that track. Starting September 9, 1957, the carrier assigned carmen employed on the Missabe Division to inspect cars on Track No. 36. The seniority of carmen is divided into the Iron Range Division and the Missabe Division, corresponding to the operating Divisions of the carrier.

The controlling agreement is dated effective January 1, 1948.

POSITION OF EMPLOYES: It is submitted the carrier and the organization recognized work performed on Track No. 36, Rices' Point Yard, as work belonging to carmen employed on the Iron Range Division, and work performed on Track No. 37, Rices' Point Yard, as work belonging to carmen employed on the Missabe Division, which is consistent with the provisions of Rule 25, captioned, "Seniority," reading in pertinent part as follows:

> "(b) For seniority purposes, the Railway will be divided into the Missabe Division and the Iron Range Division, corresponding to the operating divisions of the Company. Except as provided in Paragraph (c) of this rule, seniority will be applied on a division-wide basis."

When the carrier unilaterally substituted carmen employed on the Missabe Division for carmen employed on the Iron Range Division to perform work which, under the practice established under the seniority rules of the agreement, should have been assigned to employes on the Iron Range Division, the claimants were damaged to the extent specified in this claim.

The employes maintain that a practice long established remains as such until specifically abrogated by the contract of the parties, and consequently the carrier, in this case, unjustly deprived carmen employed on the Iron Range Division of their rights to service, in view of which the Honorable Members of this Division are respectively requested to sustain the claim of the employes.

CARRIER'S STATEMENT OF FACTS: The rules agreement between the parties, and amendments thereto, is controlling in this case and is by reference made a part of this statement of facts. For convenient reference, agreement rules, or parts thereof, that have a particular bearing on the questions at issue are quoted below:

SCOPE RULE

> "(a) It is understood that this agreement shall apply to those employes who perform the work specified in this agreement in the Maintenance of Equipment Department; Marine; Telephone, Telegraph and Train Communications, Electrical and Signal Departments of the Railway Company.

(2) The exclusive right to perform work by Iron Range carmen is limited to the Iron Range Division.

(3) The claim is one for a penalty, which under the effective agreement is not valid.

(4) The claimants were on duty and under pay, and therefore, claimants suffered no loss in pay or suffered any damage.

For all reasons stated hereinbefore the claim must be denied 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 waived right of appearance at hearing thereon.

Because of complaints that it was dangerous for Claimants to accompany Carrier's switch crews to Track 36 of the Northern Pacific Railway yard at Duluth for car inspection work in connection with interchanges between that railway and Carrier's Iron Range Division, and because the practice proved inefficient, the Carrier decided to have its interchange inspection in the Northern Pacific yard done by a carman permanently assigned there. One employe being sufficient, a carman from Carrier's Missabe Division was assigned for interchange inspections on both N. P. track 37 for the Missabe division and N. P. track 36 for the Iron Mountain Division. He spends only about two hours per day in work on track 36. The record indicates that no employe was furloughed or adversely affected by the permanent assignment, which constituted a new position.

The claim is that "under the controlling agreement the work of inspecting cars on Track No. 36, Rice's Point Yard of the Northern Pacific Railway, Duluth, Minnesota, belongs to Carmen employed on the Iron Range Division," and that one of them should receive a day's pay at punitive rate for every day on which the Missabe Division carman has performed any inspection on that track.

The fact that the Northern Pacific Railway's yard track 36 has been assigned for Iron Range Division interchanges cannot of itself confer exclusive rights there to Carmen of that Division of this railway, nor does the Agreement sustain the claim. Rule 25 (b) provides that "the railway will be divided into" the two divisions, and that "seniority will be applied on a division wide basis." Rule 25 (a) provides that employes covered by the agreement "will hold seniority rights in their respective seniority classifications and on their seniority division * * *." Rule 25 (c) provides that each employe "may exercise such seniority throughout the division." (Emphasis ours.)

No provision is found for the application of seniority outside of the divisions into which the railway is divided. Consequently this board cannot find

that the Claimants hold seniority rights on Track 36 of the Northern Pacific Railway's yard at Duluth.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June, 1961.