

Award No. 3773
Docket No. 3683
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the 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 December 11, 1958 there was a wreck at Ivanhoe, Pa. A car inspector was brought from Pittsburgh Station to perform work at this point. This is a violation of the agreement Rule 39, paragraphs (a) and (e). Since the agreement was violated and an employee was brought from another seniority district to perform work at Ivanhoe, Pa., which is in the McKees Rocks Seniority District, the organization requests that R. C. Stoner, Car Inspector from McKees Rocks District be compensated eight (8) hours for December 11, 1958.

EMPLOYES STATEMENT OF FACTS: At McKees Rocks, Pa. the car inspectors do have a seniority roster for the McKees Rocks District.

At Pittsburgh, Pa. the car inspectors do have a seniority roster for the Pittsburgh District.

There are two (2) separate seniority districts.

On December 11, 1958 the carrier brought a car inspector from the Pittsburgh seniority district to perform work that belongs to car inspectors that are on the McKees Rocks seniority roster.

Under the present agreement the carrier has no rights to bring any employee from one seniority district to another to perform any work whatsoever.

The carrier did have employees at McKees Rocks, Pa. (car inspectors) that were capable and available to do the work that was performed by the car inspector who was brought from Pittsburgh seniority district.

This case was handled on the property of the carrier and is known as Case MY-35.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1,

carrier more freedom of action that under normal conditions of operation, carrier would refer to the following excerpts from awards of the First Division:

Award 16083

"* * * There are many awards cited by the parties on the question of 'Emergency'. We have examined both sides of the question and note the dependence placed on whether or not the main track is blocked and whether trains are delayed or waiting the clearing of the main line as determining guides in declaring the emergency.
* * *"

Award 16594

"* * * 'Emergency' has received various definitions none of which will be repeated here. An emergency however usually embraces an unforeseen or unanticipated incident or condition reasonably calling for prompt or immediate action. In the light of the recognized elements of an emergency and in reason it would seem that when carrier management became apprised of the fact that a road train was dead out on the main line and could not be moved without help, it was justified in treating the incident with its attendant circumstances as an emergency and in acting accordingly."

Award 18927

"* * * We have often found that where main lines are blocked by disabled trains, it is prima facie indication of the existence of an emergency. * * *"

Carrier submits that the above cited awards recognize the fact that an emergency situation is created when carrier's main tracks are blocked. Thus, having supported the emergency condition that existed at Coraopolis on December 11, 1958, carrier avers that Car Inspector Spanik was properly handled under Rule 5 of the applicable agreement and the claim as presented in favor of Car Inspector Stoner should be denied.

CONCLUSION

Carrier has conclusively shown without doubt that due to the derailment at MR Interlocking Plant on December 11, 1958, an emergency situation developed, causing carrier's passenger trains to terminate and start from Coraopolis while this emergency existed.

Carrier has also shown that the movement of a car inspector from Pittsburgh to perform his assigned tasks is contemplated and permissible under Rule 5 of the applicable agreement.

It has also been shown that the claim as presented is for a penalty payment which is not supported by the agreement. Carrier has also shown that a companion claim is being presented to this Division in an attempt to further extract unwarranted and unjustified payments from the carrier.

Carrier respectfully submits that the claim as presented is devoid of merit and should 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 respectfully 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.

In an emergency due to a wreck, passenger trains were unable to reach Pittsburgh, and it was temporarily necessary to use Coraopolis, in the McKees Rocks seniority district, as the turn-around point. There being no coach cleaners in that district and the car inspector on duty at Ivanhoe Yard, a nearby point in the district, not being experienced in the inspection of passenger cars, Inspector Spanik and three coach cleaners were brought out to perform at Coraopolis on the second shift the work regularly done by them at Pittsburgh.

The claim is that the use of Car Inspector Spanik in the McKees Rocks seniority district infringed the seniority rights of car inspectors there, and that claimant Stoner should be compensated eight hours pay for the day.

The Employes' Ex Parte Presentation states:

"Car Inspector Sword who was off duty was the McKees Rocks car inspector who was called to perform the work at Ivanhoe Yards and in addition to Car Inspector Sword the car inspector from Pittsburgh Station was brought to Ivanhoe Yard to perform the work at this point. The carrier should have called or used another employe besides Car Inspector Sword, if this was necessary, to perform the work at Ivanhoe Yard instead of bringing in an inspector from the Pittsburgh seniority district to do this work."

They cite paragraph (a) of Rule 39, which provides that the senior employe bidding "will be awarded the position, providing he possesses the necessary fitness and ability," and state:

"According to this paragraph the carrier had admitted that all car inspectors on the McKees Rocks seniority roster are qualified car inspectors or they would not have been awarded jobs as car inspectors. Nowhere in the contract are there any rules that separate freight car inspectors from passenger car inspectors and all inspectors are required to inspect both passenger and freight cars."

But the "fitness and ability" is for the work of the particular position, which apparently had little or nothing to do with passenger cars, whose turn-around point was in the adjoining seniority district. Consequently, the car inspectors' classification in the McKees Rocks district is not automatic proof of their qualification for passenger car inspection. While under Rule 39 employes bidding for positions must "be given every opportunity to qualify," there is no time for that in an emergency if the necessary public service is to continue without undue delay.

Furthermore Inspector Sword was not superseded but continued his work while Inspector Spanik performed the passenger car inspection; and claimant Stoner, even if experienced in passenger car inspection, was not deprived of work, since he filled the next shift on that and the succeeding day.

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.