

Award No. 3920

Docket No. 3740

2-GM&O-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**GULF, MOBILE AND OHIO RAILROAD COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the carrier improperly assigned other than Carmen to inspect freight cars at Burksville and Alto Pass, Illinois.

2. That accordingly the carrier be ordered to additionally compensate the following Carmen in the amount of five hours and thirty minutes at the straight time rate for each date indicated, and rotated in the order which they appear and compensated a like amount for each violation subsequent to April 7, 1959:

H. S. Lambert—February 25, March 3, March 3, March 4, March 17, and April 8, 1959.

L. Dailey—March 7, March 21, March 22, March 29, April 3, and April 6, 1959.

J. F. Thornton—February 18, February 25, March 11, March 11, March 18, and April 7, 1959.

R. Smith—February 12, February 13, March 6, March 13, March 26, and April 5, 1959.

G. C. Stanton—February 9, February 16, February 23, March 2, March 30, and April 6, 1959.

C. H. Croach—March 1, March 15, March 22, March 29, April 5, April 5, 1959.

EMPLOYES' STATEMENT OF FACTS: Alto Pass and Burksville, Illinois are located between the terminal points of Venice, Illinois and Tamms, Illinois, of the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier.

CONCLUSION

Carmen have never had or exercised the exclusive right to observe trains. Such observation is made by various employes, including train and engine service employes, agents, towermen, levermen, maintenance of way employes, communication and signal employes, and all other employes who are in a position to observe the trains. Prior decisions of this Board, and other Boards, deny the exclusive right of carmen to observe trains. For Carmen to have the monopoly of observing trains would be impossible to carry out. The claim is contrary to the contract, past practice, is in conflict with the obligation of other crafts and impossible of application.

The carrier urges that the claim is totally without 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 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.

Rule 502 of the parties' agreement says that the inspection of cars is carmen's work, and Rule 33 says in effect that none but carmen shall perform such service. The issue in this case is then whether the observations of trains at Alto Pass and Burksville made by train crews pursuant to carrier's orders reproduced in the record was the sort of inspection reserved to carmen by said Rules.

On this question the Division is forced to rule that petitioner has failed to introduce evidence justifying an affirmative finding. As stated in Award 3745, "the observation made by the train crew could in no manner be considered similar to the mechanical inspection and repairs made by the Car Inspectors . . ." "All that the train crew is required to do when the train is stopped is to observe the train, there is no evidence that any work was performed." These findings from that Award are equally applicable to the facts of the instant case. There is no proper basis for a sustaining award here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1962.

DISSENT OF LABOR MEMBERS TO AWARD 3920

The issue as stated by the majority is incorrect; the issue does not deal with observation but with "inspection" of trains at Alto Pass and Burksville "made by train crews pursuant to carrier's orders . . ." Employees' Exhibits A-1 through A-5 (carrier's instructions showing this work to be inspecting) are justification for an affirmative award and the majority should have so found.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink