

**Award No. 4060**

**Docket No. 3760**

**2-NYC-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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. — C. I. O.  
(Carmen)**

**THE NEW YORK CENTRAL RAILROAD COMPANY  
(Western District)**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That the carrier's use of other than carmen to read the tape on the Servograph recording unit and make any necessary reports in reference to the inspection of journal boxes and detection of hot boxes by the "Servosafe Hot Box Detectors" at Fairview, Pennsylvania, is in violation of the controlling agreement.

2. That carmen subject to the controlling agreement should be assigned to perform all operations described in Claim 1 and compensated for all time the aforesaid work is, or was performed by other than carmen at Fairview, Pennsylvania.

**EMPLOYES' STATEMENT OF FACTS:** A "Servosafe Hot Box Detector" was installed at Fairview on July 15, 1957, under the supervision of the Test Department and operated by employees in that department until July 25, 1957, when it was operated on a three shift, seven day basis by a clerk from the engineer's office and three employees from the Signal Department.

The control cabinet and the recorder for the servo device were placed in a building adjacent to the track side installation. As the "Servosafe Hot Box Detector" makes an individual inspection of each journal as it passes over the electronic eye, the findings are recorded on a paper tape on the recording unit, and inspecting of the tape to ascertain whether there is evidence of a hot box was done by representatives of the carrier's Research Department from July 15, 1957 to July 25, 1957, and Signal Department employees from July 26, 1957 through December 30, 1957 — seven days per week, 24 hours per day.

"Detectors" for east bound trains are located at Fairview, Pennsylvania, approximately ten miles west of Erie, Pennsylvania.

other tribunal would compel the carrier to comply with the present demands of the carmen which would result in an extravagant waste of manpower and money.

Likewise there is no clerks' work in a tower and no signalman's work in a dispatcher's office on a regular basis. If the reading of tapes were assigned to one specific class of employes, the carrier would be limited as to location of recorders due to the necessity of having to locate them where the assigned employes' time could be fully utilized.

For these reasons and for efficient operation, the carrier's position is that no one specific class or craft should be designated to perform the work of reading the recorder tape.

Last but not least is the fact that the petitioner has the burden of proving its case and showing with undeniable evidence that carmen have established the exclusive right to man the Servo Hot Box Detector at Fairview. This it has not and cannot do.

The carrier has shown that:

1. Notice should be given to interested other parties;
2. Part "2" of the claim should be dismissed due to claimants not being named;
3. The reading of the tape is not an inspection such as inherently calls to the class of carmen, and;
4. The reading of the tape is not now and never should be judicially awarded to any one class or craft;

therefore, the claim is entirely without merit and if not dismissed, 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.

In Award 3916 the Division, with the assistance of the instant referee, denied on its merits a claim that presented an issue of substance identical to the one here posed. Therefore the question now must be, are there any facts and/or any rules in the instant docket that would properly lead the same Division to a contrary determination?

Careful study of the submissions in said docket compels the Division to answer this question in the negative. There is no basis here for a sustaining award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of September 1962.

**DISSENT OF LABOR MEMBERS TO AWARD 4060**

The majority states "There is no basis here for a sustaining award." Of course there is a basis here for a sustaining award; it is Rule 154 of the controlling agreement and we submit that the parties to a dispute are entitled to an award rendered on the controlling agreement between the statutory parties. Unfortunately this was not done in the present instance or in Award 3916 cited by the majority. Upholding the carrier in any unilateral change in working conditions which are embodied in an agreement made pursuant to the General Duties of the Railway Labor Act is a negation of the agreement and Sec. 6 of the Railway Labor Act.

C. E. Bagwell  
T. E. Losey  
E. J. McDermott  
R. E. Stenzinger  
James B. Zink