

Award No. 4146
Docket No. 3863
2-CR&I-CM-'63

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. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CHICAGO RIVER & INDIANA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Rules of the current Agreement when on March 11, 1958 it laid off four (4) Carmen in Halstead Street Yard of the (Chicago Junction Railway Company) The Chicago River and Indiana Railroad Company and transferred their work to the Trainmen.

2. That these carmen who were laid off on March 11, 1958 Messrs. A. Cameron, E. Mokusak, B. W. Patti and J. Grekovicz be paid for all time lost until they are returned to service.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the (Chicago Junction Railway Company) The Chicago River and Indiana Railroad and System Federation No. 103, which reads as follows:

**"AGREEMENT BETWEEN
INDIANA HARBOR BELT RAILROAD, CHICAGO RIVER AND
INDIANA RAILROAD**

And All That Class Of Employes Represented By,

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES DE-
PARTMENT A. F. OF L. MECHANICAL SECTION NO. 1 THEREOF:**

1—International Association of Machinists.

**2—International Brotherhood of Boilermakers, Iron Ship Builders and
Helpers of America.**

**3—International Brotherhood of Blacksmiths, Drop Forgers and
Helpers.**

4—Sheet Metal Workers' International Association.

2. Carmen's Rule 154 is not violated when trainmen couple air hoses and make air tests; and
3. The claim in the instant dispute is wholly without merit and should 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 were given due notice of hearing thereon.

This claim is in all material respects identical with that in Award 4145 and necessitates the same conclusion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.

DISSENT OF LABOR MEMBERS TO AWARDS Nos. 4145, 4146, 4147

A reading of the Cheney Award and Shipley v. P. & L.E. R.R. Co., will readily reveal that they are inapposite. The pertinent Court cases are *Virginian Ry. Co. v. System Federation No. 40*, 57 S. Ct. 592 and *Order of R. R. Telegraphers vs. Railway Express Agency*, 64, S. Ct. 585.

The majority in quoting an excerpt from Award 1626 to support the present findings seemingly overlook that part of the quote reading “* * * unless the rule is enlarged by special agreement.” That there was a special agreement in the instant case is shown by letter of February 6, 1946, addressed to the General Chairman of the Carmen by the Superintendent of Equipment, in which it is stated:

“* * * I have hereby agreed that we will * * * perform the work at both locations, namely Old Blue Island Yard and LaGrange, with I.H.B.R.R. Carmen forces.

* * * we will therefore agree * * * to comply with the agreement enacted here this A. M. * * *”

The awards cited by the majority show a lack of evaluation of Second Division awards. In Award 1372 on the New York Central Railroad, of which the Indiana Harbor Belt Railroad and the Chicago River and Indiana Railroad are subsidiaries, the parties there, as here, by settlement reached on the property by those in authority to settle such claims, decided that the nature of the instant work was carmen's work and the majority should have so held here.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink