

Award No. 4147
Docket No. 3938
2-IHB-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)**

INDIANA HARBOR BELT RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling agreement when all carmen's jobs were abolished at McCook and Bellwood on the following dates:

McCOOK

3:00 P. M. to 11:00 P. M.	March 9, 1958
7:00 A. M. to 3:00 P. M.	March 16, 1958
11:00 P. M. to 7:00 A. M.	March 16, 1958

BELLWOOD

3:00 P. M. to 11:00 P. M.	April 11, 1958
7:00 A. M. to 3:00 P. M.	August 20, 1958
11:00 P. M. to 7:00 A. M.	August 20, 1958

Also Elsdon 11:00 P. M. to 7:00 A. M., March 16, 1958 all in the Norpaul seniority district, and improperly transferred the carmen's work of coupling air hose, bleeding air from cars, testing of air brakes, and repairing cars, to the Switchmen and/or Trainmen.

2. That the Carrier be ordered to restore the above work to the carmen's craft and carmen who were furloughed on account of this action, viz., Messrs John Liber, Kenneth Wasson, Paul Burggeman, Samuel Roberts, Anton Damjanich, D. Jogielski, James Imlook and Joe Cirulla, be compensated for eight (8) hours per day, five (5) days per week, from February 22, 1959 until these jobs are restored.

EMPLOYEES' STATEMENT OF FACTS: Norpaul seniority roster has a complement of 52 carmen, and it embraces McCook, Bellwood and Elsdon. Under dates of March 9 and 16, 1958, the carmen's positions at McCook were abolished and their work turned over to the trainmen or switchmen. Under

Railroad Trainmen has not been altered by any agreement with the Brotherhood of Railway Carmen. Under the carmen's Classification of Work Rule 154, which does not mention coupling air hose, the carmen's known duties are listed. Under the clause in carmen's Rule 154, providing that "* * * all other work generally recognized as carmen's work," the carrier contends that it has never, by written agreement, oral agreement, or past practice, recognized the coupling functions and making air tests as being within the exclusive province of the carmen's craft.

CONCLUSION: The Carrier has shown —

1. Coupling of air hoses and making air tests is not exclusive work of carmen;
2. Carmen's Rule 154 is not violated when trainmen couple air hose and make air tests; and
3. Continuance of the carman positions is not justifiable.

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 arises on the same carrier and under the same rules, and 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.

LABOR MEMBERS

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink

Robert E. Stenzinger