Award No. 4287

Docket No. 3884

2-NYC-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

NEW YORK CENTRAL RAILROAD COMPANY (SOUTHERN DISTRICT)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Management violated the current agreement when on December 16, 1957 they laid off Carman R. L. Rucker and turned his work over to trainmen.

2. That Mr. Rucker went to work at Zanesville, Ohio, 11-10-1948 as a carman under Rule 154 of the Carmen's Special Rules, coupling air hose, testing and inspecting air on trains and cars, and that he should be paid for all time lost, straight time for straight time hours and overtime for overtime hours, until his job is returned to the carmen.

EMPLOYES' STATEMENT OF FACTS: Prior to Carman R. L. Rucker bidding on this position at Zanesville, Ohio, Mr. J. W. Hagley, Carman, worked there for a number of years, coupling air hose, testing and inspecting air on trains and cars, until he was separated from his position in 1948. His position then was bulletined under Rule 18 of the General Rules and Rule 154 of the Carmen's Special Rules for coupling air hose, testing and inspecting air on cars and trains in the Zanesville, Ohio Yards.

Mr. Rucker bid this position and was awarded same on 11-19-1948, and went to work coupling air hose, inspecting and testing air on trains and cars, and continued to do this work until December 16, 1957, when he was laid off and his work turned over to the trainmen. Since that time the trainmen are doing this work and taking the trains to Fultonham, Ohio, as heretofore.

POSITION OF EMPLOYES: It is submitted that should there be any doubt that prior to December 16, 1957, the current agreement, particularly

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.

The Claimant, R. L. Rucker, was employed by the Carrier as the sole carman (inspector) at Zanesville, Ohio. His duties included inspecting cars, making light repairs, coupling air hose, and making air tests.

Zanesville is an interchange point between the Carrier and the Pennsylvania Railroad Company. In December, 1957, the Carrier decided to discontinue the interchange car inspections which had been performed by the Claimant. Thereafter, cars received at Zanesville have been moved to the Carrier's Fultonham Yard, a distance of about eleven miles, where they are inspected and repaired by carmen stationed there. However, cars occasionally arrive at Zanesville with minor defects requiring repairs before they can be moved to Fultonham. In such instances, carmen are sent from Fultonham to perform such minor repairs. But more extensive repairs are made at Fultonham.

As a result of the discontinuance of interchange car inspections at Zanesville, the position of carman (inspector) occupied by the Claimant was abolished and he was furloughed. Thereafter, trainmen have been assigned to couple air hose and to make air tests at Zanesville prior to the movement of cars to Fultonham.

The Claimant filed the instant grievance in which he contended that the Carrier violated the applicable labor agreement when it furloughed him and assigned coupling of air hose and making air tests to trainmen. He requested compensation for all time lost until he is re-assigned to perform said work at Zanesville. The Carrier denied the grievance.

This case poses the recurrent question of whether coupling of air hose and making air tests incidental to car movements constitutes work exclusively belonging to the carmen's craft. For the reasons hereinafter stated, we are of the opinion that the answer is in the negative.

1. In our recent Award 4286, we affirmed a prior Award (4145) in which we held that "in general, in the absence of specific agreement, the work of coupling and uncoupling air hose and testing air has been held exclusively reserved to carmen only when performed as an incident thereto." We have found nothing in the record before us which would justify a different point of view. Accordingly, we again adhere to the above stated principle which is in accord with numerous rulings of this Board as well as with the detailed Award of Referee Geo. Cheney, dated August 1, 1951, and the decision of the U. S. District Court, Western District of Pennsylvania, in the matter of Shipley v. Pittsburgh & L. E. R. Co., 83 F. Supp. 722 (1949).

Applying said principle to this case, we have reached the following conclusions:

Rule 154 of the labor agreement on which the Claimant primarily relies contains a specific description of various tasks coming under the jurisdiction of the carmen's craft. However, coupling of air hose or making air tests incidental to car movements is not specifically listed. The Rule also provides that all other work not explicitly enumerated therein but generally recognized as carmen's work belongs to their craft. In this connection, the Claimant argues "that the work performed by trainmen on cars assembled in the Zanesville, Ohio, Yards is subject to be handled as other carmen's work, covered in Rule 154" (see: Organization's Submission Brief, p. 5). We disagree. Even if one assumes that coupling of air hose and making air tests was performed by the Claimant as an incident to his regular inspection and repair duties and thus belonged to the carmen's craft while he held the position of carman (inspector) at Zanesville, the fact remains that the situation basically changed when said position was abolished. Thereafter, the work of coupling air hose and making air tests has been performed as an incident to car movements. The record is devoid of any evidence of indication that such work has generally been recognized as work exclusively belonging to carmen within the contemplation of Rule 154.

Accordingly, we hold that said Rule does not support the instant grievance.

2. The Claimant has also referred us to several instances in which the Carrier allegedly has satisfied similar claims. However, the record discloses that the factual situations underlying the previous settlements are distinguishable from the one before us. They are, therefore, of no assistance in the disposition of this case. In addition, the Carrier has called our attention to certain instances in which it has denied similar claims. Hence, we are unable to find that the Carrier and the Organization entered into a specific understanding outside of the labor agreement in which they agreed that the work here in dispute exclusively belongs to carmen.

3. It is undisputed that carmen stationed at Fultonham are occasionally sent to Zanesville to perform minor repairs so that defective cars can be moved to Fultonham where more extensive repairs are performed. In his rebuttal brief (p. 5), the Claimant asserts that the labor agreement does not allow the Carrier to furlough carmen from one seniority point and assign carmen from another seniority point to do the work of the furloughed men. He argues, that such assignments are violative of Rule 31 (Seniority). This argument involves a basic change in the nature or substance of the claim originally referred to us by the Claimant in which he contended only "that the Management violated the current agreement when on December 16, 1957 they laid (him) off . . . and turned his work over to trainmen" (see: Organization's Submission Brief, p. 1). The record shows that the Claimant's additional argument was not handled on the property before it was referred to us (see: Organization's Exhibit "A"). It follows that we have no jurisdiction under Section 3, First (i) of the Railway Labor Act to pass thereupon. For this reason, we refrain from expressing any opinion on the validity of this argument.

AWARD

Claim denied in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4287

After reading the findings of the majority we can only conclude that the record in this case was either misunderstood or ignored. One thing is certain and that is that the majority is mistaken in the conclusions reached.

The Joint Statement of Facts is as follows:

> "Mr. J. W. Hagley worked at Zanesville, Ohio for a number of years, coupling air hose and testing and inspecting air on trains and cars until 1948. His job was then bulletined under rule No. 154 of the carmen's special rules and Rule 18 of the General Rules for coupling air hose and testing and inspecting air on cars and trains in the Zanesville, Ohio Yards. Mr. Rucker bid this job and was awarded same on 11-19-48 and went to work coupling air hose, testing and inspecting air . . ."

The fact that the job was bulletined under Rules 154 and 18 is proof in itself that the work is recognized as carmen's work.

Claimant continued doing the work of coupling air hose, testing and inspecting air until he was laid off on December 16, 1957 and his work turned over to the trainmen. The majority's statement that "the situation basically changed when said position was abolished" is refuted by the carrier's statement that "The decision to discontinue interchange inspections at Zanesville on December 16, 1957 did not affect the normal train activities which consisted primarily of coupling strings of cars into single trains . . ."

In spite of the majority's statement to the contrary, the record does disclose that the factual situations underlying the previous settlements are not distinguishable from the present case. The record contains numerous instances of settlements made by the carrier when it admittedly assigned other than carmen to perform the type of work involved in the present case.

Finally, the majority's statement in paragraph numbered "3" to the effect that the claimant's argument in reference to Rule 31 involves a basic change in the nature or substance of the claim presented and that it was "not handled on the property" before it was referred to the Board is not true. On Page 5 of the employes' submission it is stated "It is inevitable that the work performed by trainmen on cars assembled in the Zanesville, Ohio Yards, is subject to be handled as other carmen's work, covered in Rule 154, consistent with the first paragraph of Rule 32, **the seniority provisions of Rule 31,** (emphasis ours) and the overtime provisions for continuous service after regular working hours stipulated in first paragraph of Rule 7 of the current collective agreement . . ."

This type of award serves to encourage a disregard of the command of the Railway Labor Act "to maintain agreements concerning rates of pay, rules and working conditions."

/s/ James B. Zink

/s/ C. E. Bagwell

/s/ T. E. Losey

/s/ E. J. McDermott

/s/ R. E. Stenzinger