

Award No. 4386

Docket No. 4201

2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly assigned other than Carmen to inspect cars in its St. Cloud, Minnesota Train Yards on August 18 and 23, 1960.

2. That accordingly the Carrier be ordered to additionally compensate Carman Sylvester Weiman four (4) hours for each of the aforesaid dates at the applicable Carmen's rate account the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Co., hereinafter referred to as the carrier, regularly employs carmen at St. Cloud, Minnesota in its facility known as St. Cloud shops. Carman Sylvester Weiman, hereinafter referred to as the claimant, is regularly employed and assigned by carrier as a carman in its St. Cloud Shops.

Prior to December 31, 1957, carrier regularly employed carmen at St. Cloud, Minnesota in its facility known as St. Cloud inspection yard and repair track who held seniority on a seniority roster known as St. Cloud inspection yards and repair track forces, which for seniority purposes is separate and apart from the St. Cloud Shops. Effective December 31, 1957, carrier furloughed all carmen working in the St. Cloud inspection yard and repair track holding seniority on the St. Cloud inspection yards and repair track forces' seniority roster.

Since the furlough of the yard forces, carrier maintains a small repair track within the confines of St. Cloud shops to repair cars bad ordered at St. Cloud. On August 18 and 23, 1960 carrier's St. Cloud Shop Foreman, Fred Burke inspected the following freight cars in the St. Cloud train yard; UTLX 76982, GN 74578, GN 65385, GN 75016, GN 75516, GN 75745, GN 74624, GN 75366, GN 75574 and GN 74840, and bad ordered them for such defects as air brakes, doors and defective floors.

This dispute has been handled with all officers of the carrier designated to

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 Organization contends that on August 18th and 23rd, 1960 the Carrier improperly assigned other than Carmen to inspect cars at its St. Cloud inspection yards and repair track.

The essential facts presented indicate that on December 31, 1957 the Carrier closed its St. Cloud Inspection Yards and Repair Track, furloughed all carmen and carmen helpers and left only a small working force of laborers to clean cars at that facility. The laborer's foreman, Fred Burk, previously had been the foreman at the closed facility; he reports to the Superintendent of the St. Cloud Car Shops which is the point to which the repair work previously performed at the St. Cloud Inspection Yards and Repair track had been transferred.

The claimant in the instant case is employed at St. Cloud Car Shops and has never held seniority at the closed Inspection Yard and Repair Track located approximately 11 miles away.

To support its contention the Organization offers 10 Thermofax copies of Bad Order Cards. One of these cards bears the signature of Fred Buck; two are purportedly signed by Al Feldema, allegedly an Assistant Foreman of the St. Cloud Car Shops; the remaining cards are unsigned. Were it not for the fact that the parties have agreed to have this Award serve as the principle award for additional cases we would be disposed to say that the Organization has failed to sustain its burden of proving its contention, for we do not believe that the evidence proffered is sufficient for a sustaining Award; however, as will be pointed out later, other factors are involved therefore we will go into the merits of the case because the Carrier has not denied that, upon occasion, Assistant Car Forman Burk may inspect a car and/or a Bad Order Card on it.

The Organization relies upon Rule 83, the pertinent part being:

"Carmen's work shall consist of building, maintaining, dismantling, ***, painting, upholstering and inspecting all passenger and freight cars ***."

and upon Rule 42(a) which states:

"None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, except Foremen at points where no mechanics are employed."

and also upon Rule 2(a) which provides:

"Seniority or employes covered by this Agreement in each craft shall be confined to the point at which employed. It is agreed that

Superior, Jackson St., Dale St., St. Cloud, Great Falls and Hillyard Shops, each under its own Supt. of Shops, will each constitute a seniority point under this rule. It is further agreed that Superior and Allouez Roundhouses will jointly constitute a single seniority point under this rule for other than Carmen."

as being decisive in its favor.

The Carrier denies that an Assistant Foreman is performing Carmen's work and points to Rule 42(a), quoted above; to Rule 42(b) which says, "This rule does not prohibit Foremen in the exercise of their duties to perform work."; and to its Consolidated Code of Operating Rules #713, 713(A), 713(B), 713(C), which require all employes to inspect trains at every opportunity and to report defects immediately; to support its position. The evidence before us requires a finding that the Assistant Foreman could make any type of an inspection at the St. Cloud Inspection Yard and Repair Track because no carmen were employed at that point, per Rule 42(a) and Awards No. 3270 and 3711 between the same parties as are before us; however the facts presented do not disclose that the Car Foreman or anyone else did more inspecting than would be allowed to him under Rule 42(b) and the practices enumerated in the quoted section of the Carrier's Code of Operating Rules.

We also believe that due to the Claimant's never having been employed at the Carrier's St. Cloud Inspection Yards and Repair Track that his seniority rights have not been damaged, nor could they be under the facts as presented, consequently his claim could be denied on the basis that, as to him, the contention of the Organization is moot.

For the reasons given above we find that the claim is without merit and should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4386

The majority admits the essential fact that on December 31, 1957 the Carrier closed its St. Cloud Inspection Yards and Repair Track and furloughed all carmen but chooses to ignore the equally essential fact that the work (inspecting) previously performed by carmen was performed by other than carmen on August 18 and 23, 1960.

Further, the majority in using the Carrier's Code of Operating Rules in a vain attempt to support the erroneous findings, overlooks the fact that the collective bargaining agreement between the parties to a dispute takes precedence over the carrier's unilateral rules. Rule 96 prescribes that "Except as provided for under the special rules of each craft, the General Rules shall govern in all cases. No interpretation shall be placed upon these rules unless agreed to by Management and General Committee."

As to the stated belief of the majority that "due to the Claimant's never having been employed at the Carrier's St. Cloud Inspection Yards and Repair Track that his seniority rights have not been damaged . . . consequently his claim could be denied on the basis that, as to him, the contention of the Organization is moot," the answer is that the violation of the agreement deprived a carman of the work involved and there is no defense that permits such a contract violation. The claim on behalf of any particular individual or individuals is only incident thereto. In other Awards the Board has refused to recognize the defense that the wrong employe holding seniority under the violated agreement is making the claim. The carrier should have been required to comply with the provisions of the governing agreement.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink