Award No. 4446
Docket No. 4421
2-P&LE-TWUOA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, A. F. of L.—C. I. O.

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That on July 18, 1961, the current Agreement was violated when work which, prior to and subsequent to July 18, 1961 has been regularly performed by a Car Inspector, was assigned to and performed by members of the train crew. This is a violation of Rule 25 and 39 of the controlling Agreement and of the Memorandum of Understanding of December 2, 1957.

2. That under the current Agreement, the Carrier improperly assigned the disputed work to Trainmen, and did deny to the Claimant, the opportunity to perform the available work on date of claim.

3. That, accordingly, the Carrier be ordered to compensate the Claimant, Walter DuRell, in accordance with provisions of Rule 1, 25 and 39 of the controlling agreement and of the Memorandum of Understanding of December 2, 1957. The claim is for eight (8) hours at time and one-half.

EMPLOYES' STATEMENT OF FACTS: Claimant, Car Inspector W. Durell, was available for work on July 18, 1961 to be utilized in the performance on any necessary work accruing to the carmens craft.

On the above mentioned date, Car Inspector Shumacker, who was regularly and normally assigned to the second trick as car inspector at Sharon, Pa. was off on account of his vacation. No provisions were made by the Carrier for a vacation relief employes.

On the above mentioned date it became necessary to dispatch a train from Sharon, Pa. to Youngstown, Ohio a distance of about 15 miles. In order to reach Youngstown it was necessary for the train to cross the Main Line, and to cross over an old low clearance railroad bridge.

In Award No. 3784 of this Division involving the same parties herein involved claim was filed by the organization in behalf of two men on the extra board account not having been used on certain specified dates. Claim was made at the punitive rate of pay for each of the car inspectors involved. The claim was sustained by the board, however, the Award read: "Claim sustained at pro rata rate."

In Award No. 3552 of this Division, again involving the same parties here involved, claim was filed in behalf of two car inspectors for eight hours each at the punitive rate of pay due to two car shop men allegedly performing the work of car inspectors. In the Findings of this Division in Award No. 3552, it was stated: "Claimants' pay for the work lost should be at the straight time rate", and the Award of the Board sustained the claim on that basis.

Excerpts from additional awards of the Second Division regarding this same principle are shown below:

> **AWARD 3406:** "* * * A sustaining award is accordingly indicated. Claimant asks payment for four hours at time and one-half rate. The proper rate of compensation for time not worked is the pro rata rate."
>
> **AWARD 3410:** "* * * The proper rate of compensation for work not performed is the pro rata rate."
>
> **AWARD 3444:** "* * * The claim as presented for electrician J. W. Benton requests compensation for the work lost at the overtime rate. The overtime rule has no application in this case, so we, therefore, order the carrier to compensate Mr. Benton for 12 hours lost to him because of the improper assignment of his work, at the pro rata rate."

See also Awards 3256, 3259, 3272 and others of the Second Division, as well as Award 3193 and numerous others of the Third Division, National Railroad Adjustment Board.

CONCLUSION: On July 18, 1961, carrier blanked the car inspector position at Sharon, Pennsylvania, because the regular incumbent thereof began a three week vacation. Thereafter, a yard crew coupled air hoses where necessary (for which the 95c arbitrary was allowed) and made a road test before departing from Sharon with their train. Carrier has shown that Article VI of the Vacation Agreement and Awards of the Second Division support its action under the within circumstances. Further, the Board has held that the work performed herein does not accrue exclusively to carmen. The claim for payment is without agreement support 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.

On July 18, 1961, during the second trick, the Carrier moved a drag of 51 cars from Sharon, Pennsylvania, to the Carrier's McGuffy Yard at Youngstown, Ohio, a distance of 15 miles.

Incidental to the train's movement, trainmen, who were members of the train crew, coupled air hoses — for which they received the 95c coupling allowance — inspected train and performed other duties.

The regular second shift Car Inspector, H. Schumacher, at Sharon, Pennsylvania, was on vacation and no vacation relief had been assigned to his position.

The Organization contends that the Claimant, Extra Second Shift Car Inspector Walter DuRell, should have been called to perform the work of "coupling air hose, inspecting the cars, making airbrake test and making a car to car airbrake test"; and that the Carrier's action constituted a violation of Rules 1, 25 and 39 of the Carrier's Agreement.

The Carrier denied that the train crew inspected the cars and made a car to car airbrake test but contended that the train crew "merely coupled air hose, and made a road test". The Carrier also contended that it had a right to blank Schumacher's job; that the work in question "was not necessarily carmen's work"; and that the Carrier's Agreement with the Brotherhood of Railroad Trainmen provides an allowance of 95c to train crew members who couple air hoses.

A neutral and objective analysis of the record supports the Carrier's position in this case. Furthermore, the Board's determination is fully supported by the "Cheney Award" as reflected by the following language:

> "* * * trainmen, yardmen, and carmen have all performed the Coupling Function. * * * such rules do not establish hard and fast exclusive boundaries as between the Brotherhood of Railroad Trainmen, and the Brotherhood of Railway Carmen, allocating the performance function solely to carmen."

The work performed by the train crew was incidental to their assignment and rightfully within the scope of their work activities.

Accordingly, the Board must deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST. Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1964.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4446

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 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 Pittsburgh and Lake Erie Railroad Company and the Lake Erie and Eastern Railroad Company 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