

Award No. 4527
Docket No. 4451
2-P&LE-TWUOA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg 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: Foremen are inspecting cars and shop tagging them on the wash-out track. This work belongs to car inspectors and not supervision. For this reason the organization requests that the carrier compensate the following car inspectors on the said date, eight (8) hours for each man, for each day on account of supervision doing the work of car inspectors: J. Papinchack—March 28, 29, 30, 1962, R. Sword—April 2, 1962, W. Cheresnowsky—April 3, 4, 5, 6, 10, 11, 17, 1962, M. Stoner—April 9, 1962, J. Nicodemus—April 12, 1962, T. H. Stevens Jr.—April 16, 1962.

EMPLOYES' STATEMENT OF FACTS: This case arose at McKees Rocks, Pa. and is known as Case MY-53.

Nowhere in the agreement is there a rule that permits the supervision to perform the work of the car inspectors.

Two (2) rules of the agreement were violated when the carrier allowed supervision to perform the work of car inspectors and the two (2) rules are Rule 25, and Rule 35.

Although the carrier does have an agreement with the foremen (supervision), the organization does not have an agreement, either with the foremen or the carrier that allows the foremen to perform any work of the carmen's craft.

Case was handled on the property of the carrier in compliance with the provisions of the present agreement.

Effective May 1, 1948 and revised March 1, 1956, the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement with the Pittsburgh & Lake Erie Railroad Company and the Lake

by the carmen's organization as being in violation of the carmen's agreement until claims were filed as indicated herein, some of which after denial were abandoned.

Carrier has shown that the carmen's agreement does not reserve such work exclusively to carmen (car inspectors) and does not restrict the right of the Carrier to require its supervisors to perform this cursory examination.

Carrier's position in this case is supported by awards of the National Railroad Adjustment Board.

Carrier respectfully submits, therefore, that the claim is completely without merit and requests that same be denied.

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 Division is called upon to determine whether the Carrier has violated Rules 25 and 35 of the applicable Agreement when it utilized Foremen for inspection purposes at the Wash-Out Track.

Rule 25, the "Classification of Work" rule states in its relevant portions:

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

Rule 35, the "Application of Stencils" rule states in its relevant portions:

"Car inspectors and other car repairmen will be required, when necessary, to apply proper light-weight stencils * * * or similar markings when the occasion arises. * * * ."

Upon review of the record and analysis of the cognizant Rules, the Division is unable to hold that the duties of the Foremen at the Wash-Out Track violates the contractual rights of the claimants. The record shows that the Foremen were performing duties not performed by Carmen, when these Foremen determined which cars, after they were cleaned, required interior repairs and which cars had to be upgraded in a manner consistent with the Carrier's current requirements.

The record is uncontroverted that this work had been performed by supervisory personnel for approximately 25 years without protest by the collective bargaining agency. The record further shows that the Petitioner initiated similar claims (MY-46, MY-47, MY-48) which were denied by the Carrier's Director of Personnel in December 1961 and which were not further prosecuted by the Petitioner.

The Division further finds upon analysis of the Rules cited by the claimants that they do not support the claims. Rule 25, when read and studied in its entirety, indicates that the duties of carmen are to inspect and repair cars to insure that the cars are in proper mechanical condition for operational purposes, and to card mechanically defective cars which might have to be repaired.

The Division cannot construe Rule 25 to read as though it authorized Carmen exclusively to make and do all and every kind of inspection of cars which the operational needs of the Carrier may require to demand. That part of Rule 25 stating that carmen will do " * * * inspecting (of) all passenger and freight cars * * * " cannot be construed as the equivalent of stating that Carmen shall do all inspecting of passenger and freight cars.

Both logic and the entire history of inspection work on this property mitigate against the contentions of the Petitioner.

The Division must conclude on the basis of the record before it that the inspection of a car, after it has been cleaned at the Wash-Out Track, by the Supervisory personnel in question for the purposes already alluded to, does not transgress the contractual rights of the claimants.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

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

DISSENT OF LABOR MEMBERS TO AWARD 4527

The findings of the majority in Award 4527 that the performance of inspecting cars at the wash track by supervisory personnel is not in violation of Rule 25 of the applicable agreement between the Transport Workers Union and The Pittsburgh and Lake Erie Railroad Company are erroneous.

Rule 25, reading in pertinent part as follows:

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

is plain, clear, unambiguous language and gives to the carmen the right to perform all car inspection work wherever such work is performed. Therefore, the award should have been in the affirmative.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink