Award No. 4648
Docket No. 4643
2-P&LE-TWUOA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting 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: That the Pittsburgh and Lake Erie Railroad Company compensate William Tucciarone four (4) hours at pro rata rate (call) for each date that trainmen are used at Sharon, Pa. to couple air hose and make a car to car air brake inspection on cars being moved out of the Sharon yard.

This claim to be retroactive as per Rule 38 of the controlling agreement and is to be a continuing claim until such time as the Carrier ceases the violation.

EMPLOYES' STATEMENT OF FACTS: William Tucciarone, hereinafter referred to as claimant, is regularly employed by the carrier in the McGuffy Street Yard at Youngstown, Ohio.

Claimant holds seniority at Sharon, Pa. Yard, a facility where Freight Trains are inspected and the location where violation occurred.

Claimant is entitled to be called for overtime at Sharon, Pa. Yard as described in the overtime agreement.

The parties to this dispute have an agreement in effect on the property and such agreement covers the employes in this dispute at Sharon, Pa. Yard.

The carrier does not have an agreement with members of the train crew who performed the work claimed by the employes in this dispute, and proof is presented by the employes by letter dated February 18, 1964 directed to Milo Shimrak, International Representative, TWU-AFL-CIO by W. J. Petrie, Director of Personnel of the carrier.

Members of the train crew at Sharon, Pa. yard couple air hose and make a car to car air brake inspection on cars being moved out of the Sharon Yard. Claim was made in behalf of claimant on June 20, 1963 to General Foreman,

prior dockets involving the same parties here involved and has found the claims of the Employes to be without merit. Under the doctrine of "Res Judicata" and in holding with the consistent decisions of this Board, the instant claim should likewise 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 employes concede that our Awards No. 3335, 3339, 3340, 3714, 4209, 4210, 4239 and 4240 denied their claims based upon coupling air hose and testing air brakes by trainmen in connection with the movement of their trains. They contend that we should now decide otherwise because of the incorporation of a scope rule in the agreement effective June 1, 1963. Article III thereof is as follows:

> "Qualified employes of the Carmen's Craft shall be used to perform work specified in the Carmen's Classification of Work Rule, except where such work is recognized as belonging to employes not covered by this Agreement or where such is covered by existing agreements with other organizations."

The coupling of air hose and testing air brakes in connection with the movement of trains has been recognized as a function of and belonging to trainmen by our awards between these parties, listed above, and throughout the railroad industry. Hence this scope rule does not support the claim.

The fact that the trainmen who performed the work were employed by another carrier does not alter the character of the work nor constitute any violation of this agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.

DISSENT OF LABOR MEMBERS TO AWARD 4648—DOCKET 4643

In this award the majority erred in finding there was no violation of the collective agreement.

The majority admits that the scope rule of the collective agreement was amended June 1, 1963, to read as follows:

> "Qualified employes of the Carmen's Craft shall be used to perform work specified in the Carmen's Classification of Work Rule, except where such work is recognized as belonging to employes not covered by this Agreement or where such is covered by existing agreements with other organizations."

The majority ignored the fact that the scope rule quoted above was negotiated subsequent to the awards cited by the Carrier and relied upon by the majority in denying this claim.

The majority also admits that the work involved was performed by employes of another Carrier and ignores the fact that these employes have no bargaining rights under any agreement on the P. & L. E. Railroad.

The award should have been in the affirmative.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink