Award No. 4831
Docket No. 4667
2-B&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Baltimore & Ohio Railroad Company, hereinafter referred to as the carrier, improperly assigned and used other than car inspectors to perform car inspector's work at East St. Louis from July 13, 1962, through October 1, 1962, inconclusive.

2. That accordingly the carrier be ordered to pay the claims as entered for (8) hours pay each day that the infraction occurred. The accumulated pay to be equally divided amongst the following claimants:

William A. Brown
J. B. McDermott
L. V. Williams
Edward W. Starkes
William L. Niederbach

EMPLOYES' STATEMENT OF FACTS: On July 12, 1962, orders were issued by the general car foreman, reassigning the work of inspecting empty trailers, going to Springmeier Company, for mechanical defects and the making of a record of such inspection to other than the car inspectors.

Thereafter the empty trailers going to Springmeier Company were inspected by employes of the Brotherhood Railway Clerks. Record of said inspections was made and signed for by the Clerks on Form 3289, revised.

Inspections were performed on the trailers by the clerks from July 13, 1962, through October 1, 1962, inclusive.

It has always been considered the work of carmen to make the physical inspection of trailers on the B&O property. Car inspectors are required by orders to inspect all trailers.

After October 1, 1962, the car inspectors were reassigned the work of inspecting the trailers at East St. Louis, thereby terminating the claims.

It follows logically that this could not be work of a kind that has by practice and custom been performed by employes coming under the scope of the carmen's special rules. The petition submitted here by the claimants is beyond question an attempt to obtain work under the scope of the agreement without the benefit of a proper negotiating procedure. There are numerous awards of the Adjustment Board holding that that tribunal is without warrant or authority to look beyond the literal language and intent of the rule, so that the result would be the writing of a new rule or the amending on an existing rule.

CARRIER'S SUMMARY ON THE MERITS: In its summary statement on the merits the carrier submits that the claim made here coming from employes covered by the Carmen's Special Rules is entirely without merit on the following bases:

1. There is no traditional work of Car Inspectors involved in this "joint visual inspection."

2. This "joint visual inspection" does not certify a trailer from a mechanical, electrical, operating or Safety Standpoint.

3. The sole purpose of the Form 3289 is to protect the Carrier's interest under the "Trailer Lease and Receipt" agreement.

4. The Carmen's Special Rules are not adequate to support this claim.

In this Division's Award 3745 (Carmen v. L&N) (Referee Mitchell) claim was made that the inspection of trains was exclusively carmen's work and that the carrier by requiring train crews to make a visual inspection of equipment violated the carmen's agreement. That claim was denied with the following holdings in part: " * * * It is apparent the train crews have for years been making the type of inspection involved in this dispute. The observation made by the train crew would in no manner be construed similar to the mechanical inspection in repairs made by the car inspectors of the Carmen Craft. All that the train crew is required to do when train is stopped is to observe the train, there is no evidence that any work was performed. There has been no encroachment of the duties of the Carmen, and thus no violation of the Agreement."

A similar holding was reached in this Division's Award 3920 (Carmen v. GM&O) (Referee Daugherty) that involved a similar visual inspection.

In view of the above the Carrier submits that the claim made here is wholly without merit. The Carrier respectfully requests that this Division act to deny the claim in all its parts.

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 meaining 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 Carrier concedes that the mechanical inspection of trailers for operating conditions rests entirely with the Car Department forces, but contends that the in-

spection complained of was only a visual one for the purpose of reporting the apparent physical condition of leased trailers before and after use, to determine liability for damage.

Since, whatever its extent and purpose, this inspection of trailers was not merely perfunctory observation and was performed for Carrier at its order and for its benefit in course of operations we conclude that it comes within the definition of "inspection" as contemplated by Rule 138 and as limited to carmen by Rule 29.

The incidents complained of were not the mere notation by clerks on Form 3289 of inspection data reported by inspectors on Form J-1, but separate although brief inspections by clerks for notation thereon.

This Claim differs from Awards Nos. 3745 and 3920, in which the visual observation of trains by their crews was not a substitute for inspection by carmen, but merely a scrutiny, incidental to normal operations, of conditions which should be apparent and of concern to handlers of equipment without detracting from carmen's work.

The Employes' Submission includes as an exhibit a list, not controversed by the Carrier, of 520 trailers allegedly inspected by others than carmen on 51 operating days between the days named, averaging 10 2/5 pr day, but ranging from 2 to 22 on specific dates. Claim 2 is for one days' pay for each of the 51 dates, to be apportioned equally between the five Claimants. The carmen, if any, who lost employment by this diversion of inspection work, are entitled to be made whole. But it cannot be determined from the record, even approximately, the average time consumed by these inspections, or the time consumed by them on any day, or whether their performance by carmen would have occasioned employment by furloughed men or overtime for men regularly assigned, or for what Claimants. Obviously a full days' work cannot have been lost on each date, and the five Claimants cannot on each day have been equalliy affected by the loss.

It being clearly impossible for this Division to determine from the record the amount of pay, if any, necessary to make the several Claimants whole, Claim 2 should be remanded to the property for that determination by the parties.

A W A R D

Claim 1 sustained.

Claim 2 remanded to the property in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.

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