Award No. 4963
Docket No. 4868
2-P&LE-TWUOA-'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:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

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

DISPUTE: CLAIM OF EMPLOYES:

That the Carrier compensate J. Petrella, Car Inspector at Youngstown, Ohio 4 hours at the pro rata rate for May 24, 1964 account of Trainman used to couple air hose, inspecting and making a car to car air brake inspection and test on 13 cars in the McGuffy Street Yard at Youngstown, Ohio.

EMPLOYES' STATEMENT OF FACTS: J. Petrella, hereinafter referred to as claimant, is regularly employed at Youngstown, Ohio Gateway Yard.

Claimant holds seniority in the entire Youngstown Seniority District for carman including the McGuffy Street Yard.

Claimant is entitled to be called for overtime at McGuffy Street Yard in accordance with the overtime agreement in effect at McGuffy Street Yard.

The parties to this dispute have an agreement in effect on the property and such agreement covers the claimant in this dispute at McGuffy Street 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 a 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 McGuffy Street Yard coupled air hose and made a car to car air brake inspection of cars being moved out of McGuffy

men, allocating the performance of the Coupling Function solely to carmen. On the contrary, present rules portray examples **of the overlapping of craft lines, and illustrations of tasks which are common to the crafts of both the Brotherhood of Railway Carmen, and the Brotherhood of Railroad Trainmen.** It should also be observed that this conclusion is not original with the present Referee. The Federal District Court, in the case of Shipley vs. Pittsburgh and L. E. R. Company, 83 F. Supp. 722, previously reached an identical conclusion, from which significantly no appeal was taken."

The District Court of the United States made the following Findings of Fact, and Conclusions of Law in the Shipley case:

"11. The plaintiff trainmen who were required to couple air hose during the period covered by this action, where car inspectors were employed or available, in so coupling air hose were performing their regularly assigned duties; and on such occasions and in so doing were not working outside of their craft.

12. The coupling of air hose was common to and part of the regular assigned duties of trainmen and carmen.

13. The coupling of air hose is not common to any particular craft, and on the contrary was recognized in the craft of both trainmen and carmen.

74. Car inspectors and trainmen had coupled air hose for a long period of time prior to and during the period involved in this action.

75. Carmen or their representative bargaining agency have never complained that the coupling of air hose by trainmen was an infringement on their craft or the performance of their duties."

CONCLUSION:

Summarizing its position in the instant dispute, carrier has shown:

1. The doctrine of "Res Judicata" is applicable in the instant dispute and dictates dismissal of the claim.

2. This Division has on numerous occasions ruled on the same issues involved herein, in dockets involving the same parties here involved, and has found the claims of the employes to be without merit.

3. Awards of the Second Division, National Railroad Adjustment Board, and Special Boards of Adjustment, support carrier's position in the instant case.

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.

A member of a New York Central Railway train crew coupled airhose and made car-to-car airbrake tests on thirteen cars of his train which was being moved at Youngstown to connecting lines. This was at the McGuffy Street Yard of that Railway, of which the carrier is a subsidiary. Many years ago the New York Central had merged its car inspection and repair forces with those of the Carrier in the Youngstown area, including the McGuffy Street Yard.

It has long been held by this Division that such work does not belong exclusively to carmen, but in their work when performed in connection with inspecting and repair of cars and other carmen's work (Awards 32, 457, 1333, 1372, 1554, 1626, 1636, 1770 and 2626); that it is trainmen's work when performed in connection with the movement of their trains (Awards 3335, 3339, 3340, 3714, 4209, 4210, 4238, 4240, 4446 and 4648).

The Employes contend, as they did in the claim which was concluded by Award 4648, that this Division should decide otherwise because of the scope rule incorporated in the new Agreement effective June 1, 1963 as Article III, which provides 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."

Rule 25 is the Classification of Work rule. It includes as Carmen's work the following:

> "building, maintaining, dismantling, * * * painting, upholstering and inspecting all passenger and freight cars * * * ; pipe and inspection work in connection with air brake equipment on freight cars, cleaning, testing and repairing passenger and freight car air brake valves * * * ; and all other work generally recognized as carmen's work."

But it does not mention the coupling of air hose or the testing of air brake operation preparatory to the movement of trains, which as above noted has long been recognized as trainmen's work.

As this Division held in Award 4648:

> "The coupling of air hose and testing of 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."

Similar claims for six days during the preceding month were allowed by the general foreman at Youngstown. However such settlements by a local official do not constitute precedents binding upon the Carrier; furthermore, they were compromise settlements made to single claimants on claims by three car inspectors, without any concession that the agreement had been violated.

It is further argued, in support of the contention that this work belongs to carmen, that a car inspector had performed it until the abolishment of his position at the McGuffy Street Yard, and that the position has since been re-established for the performance of this work. A similar contention was made in Award 4648 that it was being performed on other shifts by car inspectors. But in any event, if the work is limited to that which is proper for a trainman because in connection with the movement of his train, its performance by him is not a violation of the carmen's Agreement. The Carrier has the right to schedule its work in the interest of economy and efficiency except as prevented or limited by statute or agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1966.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.