

Award No. 5302

Docket No. 5078

2-WT-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold W. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYEES
DEPARTMENT, AFL-CIO (Carmen)**

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Car Repairman, M. F. Garrott, was wrongfully denied the right to blue flag protection while working on P.R.R. train No. 403 on March 25, 1965.

2. That accordingly the Carrier be ordered to comply with rule 80; "Protection for Train Yard Men." of the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: Car Repairman, M. F. Garrott, hereinafter referred to as the Claimant is employed as Car Repairman on the 7:00 A.M. to 3:00 P.M. shift, Union Station, Washington Terminal Company, hereinafter referred to as the Carrier. At approximately 1:00 P.M. the Carrier's Car Foreman, J. C. McPhearson, advised the Claimant that if he used blue flag protection while working on P.R.R. train 403 inbound and due to arrive at Union Station at 2:00 P.M., he would be removed from the service for insubordination.

On March 26, 1965, a grievance was filed with the Carrier's Master Mechanic in the Claimant's behalf, calling the Carrier Master Mechanic's attention to rule 80 of the controlling agreement, requesting the Carrier to arrange to have its Car Foreman discontinue the threats of removal of Carmen from service for using blue flag protection and apply the terms of rule 80 of the agreement, copy attached and designated EXHIBIT (A).

The Carrier's Master Mechanic denied the Claimant's grievance and the Claimant's case has been appealed in accordance with the collective controlling agreement effective June 16, 1946 up to and including the highest designated officer of the Carrier to whom such matters are subject to appeal, with the result that said officer on more than one occasion has declined to adjust this dispute, which is affirmed by copies of letters submitted herewith as EXHIBIT

to have the provision construed more favorable to them. By their acquiescence in the application of the rule for more than thirty years they have fixed its meaning and removed any uncertainty growing out of the language used.

"We are required to say, therefore, that this servicing of journal boxes by carmen and carman helpers does not come within the purview of Rule 158 and that such work may be required without the use of blue flags by day or blue lights by night.

"AWARD

"Claim denied."

CONCLUSION: By alleging the existence of a safety hazard in connection with the performance of tasks which were never required of this claimant, and which, under existing instructions, could not have been performed without blue-signal protection, the petitioning organization has not established a basis for the grievance stated.

The carrier submits, in any event, that it has evidenced a long-standing practice of not permitting individual carmen at Union Station to blue-flag cars or trains for the sole purpose of oiling journal boxes; that the practice, as limited and circumscribed by existing orders and instructions, does not, and never did, present a safety hazard; and that the described task of oiling journal boxes is not, and never has been, considered subject to the "inspected or worked on" terms of Rule 80 as that rule has long been interpreted and applied on this property.

The grievance is without factual or agreement basis. It should be denied.

All data submitted in support of the carrier's position has been presented to the organization and has been made a part of the question in dispute.

Oral hearing is waived unless requested by the organization.

(Exhibits not reproduced)

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 waived right of appearance at hearing thereon.

Claimant, a car repairman, was ordered by Foreman McPhearson not to use blue flag protection while oiling passenger cars standing on a passenger loading track in Union Station, Washington, D. C. Claimant complied with the order and later proceeded to test its propriety by filing the present claim.

The nature of the work involved and the proof presented by Carrier and Petitioner in support of their respective positions are substantially the same as were considered by this Board in Award 5301. The two claims are companion cases and the following portion of our Findings in Award 5301 is equally applicable to the present situation:

“In any event, the burden of proof rests with Petitioner and we are not satisfied that the record in this case has established either that Claimant had to climb on, between or under the cars while performing his work or that the oiling of passenger cars while they are standing in a passenger station constitutes a clear and a present danger to employes who perform the work from the side of the cars without getting on, between or under them.”

The claim accordingly will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1967.