



Award No. 5535

Docket No. 5381

2-LV-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Controlling Agreement when it improperly assigned Trainmen on September 29 and 30, October 1, 4, 5, 6, 7, and 8, 1965 to perform the work of Carmen in making inspection and the related coupling of air hoses incidental to such inspection and air brake test.

2. That accordingly the Carrier be ordered to compensate Carmen J. Katrisine, W. Steiner, C. Bednar, W. Matz, K. Shaup and G. Shuman at an amount equally distributed between them on the basis of eight (8) hours at the applicable rate of pay for each of the above mentioned respective dates.

EMPLOYEES' STATEMENT OF FACTS: The above named Carmen, hereinafter referred to as the claimants, are all regularly assigned to position on either the first shift or third shift, they were all available to be called for this work on the above dates, but were not called.

Under date of September 22, 1965 the following notification was issued to Carman W. Matz by General Foreman G. V. Conroy:

"Effective with the close of business on Sept. 28th, 1965, your job is abolished."

The position abolished was on the second shift (3:00 P. M. to 11:00 P. M.) and the assignment called for five (5) hours daily in the Hazelton Coal Yard and three (3) hours daily between Locust Junction and Ashmore.

Carman W. Matz and Local Chairman Joseph Katrisine were verbally informed by the local management that the Trainmen would perform the work formerly done by the Car Inspector on the three (3) hours between Locust Junction and Ashmore.

Members of the Carmen Craft had been assigned to perform the work in dispute between Locust Junction and Ashmore for over forty (40) years.

As previously stated the train crew members did not by any stretch of the imagination make any mechanical test of the brakes and appurtenances of the cars in the train, there was no reason for the Carrier to assign a carman to the train involved. It is a recognized fact in the railroad industry, that to mechanically inspect the brakes and appurtenances of cars, special tools and skills are needed. Such tools and qualifications are not necessary to make air brake tests or couple air hose. Train crew members have neither the tools or skills to perform the work the claimants herein allege was performed by the train crew.

CONCLUSION: Carrier asserts that this claim should be denied for any of or all of the following reasons:

1. Not properly filed with officer designated to first receive and handle the claim.
2. No named claimants.
3. There is no rule in the Carman's agreement giving that class of employe the exclusive right to couple air hose and/or test air brakes.
4. The issue of trainmen coupling air hose and testing air brakes has been taken to this Board on previous occasions, the claims were denied and the carriers involved were upheld in the same principle herein involved.
5. The employes have failed to produce any rule or evidence to substantiate its position in this case.
6. The work herein complained of has never been assigned exclusively to any particular class of employes on this property.

Awards of the National Railroad Adjustment Board have been cited by the Carrier in support of its position.

Carrier respectfully submits this claim is without merit and should be denied.

(Exhibit 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.

Claimants are regularly assigned Carmen at Carrier's Hazelton yard on either the first or third shifts, who were available to be called on the specific dates of claim when the work giving rise to the dispute was performed by trainmen members of yard crews. Effective September 29, 1965, a car inspector position at Carrier's Hazelton yard was abolished, and trainmen, assigned to yard crews performing necessary industrial switching between

Ashmore, Pennsylvania and Locust Junction, Pennsylvania, commenced coupling air hoses and making air tests on cars handled by them while performing their assigned yard duties. Petitioner contends that Carrier violated the basic agreement between the parties as well as the National Agreement of September 25, 1964 when it assigned trainmen "* * *" to perform the work of Carmen in making inspection and the related coupling of air hoses incidental to such inspection and air brake test."

In the first instance, Carrier contends that the claim was not handled properly on the property in accordance with the requirements of Article V of the August 21, 1954 National Agreement because the initial claim filed on the property failed to name the particular claimants and the amended claim dated December 8, 1965 was untimely. The record discloses that the defect in the initial claim objected to by Carrier was corrected in the amended claim filed on December 8, 1965, and that Carrier did not raise the question of timeliness as to the amended claim while the dispute was being considered on the property. Therefore, we must conclude that Carrier has waived this procedural objection, and that the merits of the dispute are properly before us for consideration.

The record reveals that both Ashmore, Pennsylvania and Locust Junction, Pennsylvania are located within the Hazleton yard switching limits, and that we are not here concerned with trains leaving a departure yard or terminal.

Examination of the pertinent rules of the basic Agreement relied on by Petitioner fails to disclose any provision specifically granting to Carmen the exclusive right to perform the disputed work. Furthermore, Petitioner has offered no probative evidence to support its contention that the disputed work belongs to Carmen exclusively through established custom and practice. In fact, the record discloses that both Carmen and members of yard crews have engaged in the coupling and uncoupling of air hose as well as the testing of air on cars handled by them in the course of performing their assigned duties throughout Carrier's system.

The final issue before this Division concerns possible application of Article V of the September 25, 1964 National Agreement. Analysis of the record fails to show that requisite conditions existed at the time the disputed work was performed by trainmen. There were no apparent train movements beyond yard switching limits within the Hazleton yard on any of the claim dates, and all the work performed was limited to coupling air hose and related air tests incidental to the handling or movement of cars within yard limits as opposed to coupling of air hose and air brake tests, incidental to inspection and repair of cars. In view of the foregoing, the claim must be denied. Awards 457, 5368, 5439 and 5462.

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 1968.

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