



Award Number 5953

Docket Number 5775

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O.
(Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when Trainmaster Doolittle and Switchman J. D. Livingston inspected a cut of cars and bad-ordered to the repair track BM&O 59556, IC 139010, MP 82630, KCS 18556, GM&O 13562 and KCS 21192 on October 6, 1967.
2. That accordingly, the Carmen's Craft be made whole by additionally compensating Carman R. L. Bane in the amount of the minimum 4-hour call which is at the straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the carrier, maintains a train yard and repair track at Louisville, Mississippi which is a terminal point for train crews. Switching crews are maintained to switch the industries and make up and classify trains. Ten carmen are assigned to the repair track. R. L. Bane, hereinafter referred to as the claimant is one of them. He was off duty but available for service at the time Trainmaster Doolittle and Switchman Livingston performed the work here in question which was approximately 7:00 P.M.

On or about August 20, 1965, the carrier discontinued the classification of through freight trains at Louisville, Mississippi. The remaining second shift inspector positions were abolished and the men placed on the repair track which works 7:00 A.M. to 3:30 P.M., Monday through Saturday. Carmen were and are called out during the second shift period three times a week to inspect the local freight trains which operate every other day, Monday through Saturday and terminate at Louisville. They were not called out until recently, approximately April 1, 1968 when through freight trains once again were and are being classified at Louisville, to inspect through freight trains inbound or outbound.

During the period here relevant, through freight trains would set out blocks of cars at Louisville. The cars set out were then delivered to the various industries in Louisville where they were unloaded and/or loaded, then picked up by the switch crews and assembled in blocks to be picked up again by the through freight trains.

Second Division Award No. 3745 decided a similar dispute between the L&N Railroad and the carmen. This Board, with Referee Richard F. Mitchell, dismissed the case stating:

"The observation made by the train crew could in no manner be considered similar to the mechanical inspection and repairs made by the Car Inspectors or Carmen craft."

CONCLUSION:

The question in the instant case is whether or not a trainmaster and a switchman performing their required duties of observing the condition of the equipment they are handling violates the agreement applicable to carmen. The observation of cars in their trains by trainmen has been performed in this very same manner for over fifty years; the carrier's Operating Rules, by which trainmen are governed, require it. It is necessary for carrier to safeguard the lives and property of employees and the public. Trainmen and others in performing this work are not taking anything away from carmen. They are merely carrying out their responsibilities in seeing that the equipment being handled is moved safely. Carmen do not have the exclusive duty to observe cars. There is no encroachment on the duties of carmen and no violation of their agreement. The claim is without merit and should 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 employees 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.

On October 6, 1967, the claim date, a switch crew was pulling a cut of cars from the Georgia-Pacific plant at Louisville, Mississippi to be placed in an outbound train. A Trainmaster and a Switchman were charged with inspecting the cars and bad-ordered six of the cars which were subsequently placed on the repair track. The six cars were bad-ordered for a variety of reasons, including defective doors, reweighing due, defective hand hold, defective step, and defective air brake pipe.

The Organization alleges that Carrier violated the provisions of Rules 502 and 506 of the Agreement between the parties.

Rules 502 through 508 are the Classification of Work rules. The pertinent rules are quoted below:

"(502) Building, dismantling for repairs, or removing metal parts that are to be used again, maintaining, painting, upholstering, and inspecting of passenger and freight cars, wood or steel.

(506) Air brake triple valve work, such as cleaning, adjusting, testing, and repairing by replacing of new parts, pipe and inspecting work in connection with air brake equipment on freight cars."

The Organization further alleges that, pursuant to Assignment of Work Rule 33 as revised by Article III of the September 25, 1964 Agreement, the work contracted to Carmen may not be assigned to others. Rule 33 reads in part:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed."

Carrier, in essence, takes the position that the cars were not "inspected" but merely "observed." In its Submission, Carrier states that: "Switchmen are responsible for the observation of equipment they are handling and this observation is an integral part of their duties and responsibilities." (Emphasis added.)

While no car inspectors were employed in the train yard, Carrier maintained a freight car repair track; and carmen were called from the repair track to the train yard to perform carmen's work.

The Board finds that under the circumstances and the location where the work was performed, that Carrier violated the Agreement. What transpired was more than just an "observation", but a careful and critical examination of the cars sufficient to constitute an "inspection."

A W A R D

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1970.