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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6467
Docket No. 8325
2-N&W-CM-'73

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Current Agreement and damaged Carman R. M. Lawrence, Sr., when on May 30, 1970 Trainmen were required by the management to perform the inspection of car and/or cars, same being recognized as Carmen's work.
2. That the Norfolk and Western Railway Company be ordered to compensate Carman R. M. Lawrence, Sr., for four (4) hours at the straight time rate of pay for May 30, 1970, account such inspection made by Trainmen.

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.

Petitioner alleges that trainmen were required to inspect a car or cars on the specified date, work which they aver has long been recognized as Carmen's work. They rely on rules 110, 30(a) and 122, the classification of Work Rule, quoted in part as follows:

Rule 110

"Carmen's work shall consist of building, maintaining, dismantling (except all wood freight train cars and steel cars being dismantled for the purpose of scrapping or rebuilding), painting, upholstering and inspecting all passenger and freight cars both wood and steel, x x x and all other work generally recognized as carmen's work."

They argue the point that Carrier was well aware that inspection of trains and cars in the yard and terminal is Carmen's work.

Rule 30(a)

"None but mechanics or apprentices regularly employed as such shall do mechanics' work, except that helpers may assist mechanics and apprentices in performing their work, as per special rules of each craft."

Rule 122

"When necessary to repair cars on road or away from the shop, carmen and helpers, when necessary will be sent to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, wheel, and work of similar character."

Petitioner alleges that Carriers' statement "implying that the trainmen were protecting their train when inspecting said car or cars in Elmore Yard was false and misleading, account the crew had yarded their train, cut off same, and were traveling through track No. 9 to register off duty." Thus they conclude that the cut of cars on track No. 5, where inspection was made was no longer in their charge; hence did not constitute a train as is properly defined in the operating rules.

A review of the evidence in this case reveals that it is contradictory as to a material fact, that is, the place where the work was performed. Was it performed outside of, or within the confines of the yard itself? We are unable to resolve this question. Petitioner has the burden of proving that trainmen took over and usurped the duties of carmen. The conflicting statements in the record without supporting evidence of probative value, mandates that we dismiss the claim for lack of proof. We will dismiss the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killeen

Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1973.