

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- (1) That the use of Section Manager C. N. Routt and Draftsman J. R. Wilson to inspect two-hundred (200) new covered hopper freight cars purchased by the L&N Railroad from the American Car and Foundry Company, Huntington, W. Va., was in violation of the current Agreement, and
- (2) accordingly, the L&N Railroad should be ordered to additionally compensate N. R. Liebert and R. L. Jarboe from October 13 through November 7 and from October 13 through October 17, 1975, respectively, all dates inclusive, for the amount they would have earned had they been allowed to perform the work, including but not limited to the overtime in excess of eight hours per day and for the Holiday on October 27, 1975.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

In 1975 Carrier entered into a purchase agreement for 200 new covered hopper cars from the American Car and Foundry Company at Huntington, West Virginia. Prior to accepting delivery of the cars Carrier sent two employees, Section Manager C. N. Routt and Draftsman J. R. Wilson to Huntington, West Virginia to inspect the cars. Claimants herein allege that this violated the Carmen's Classification of Work Rule (No. 104).

Review of the pertinent contract language shows that it does not expressly address itself to the designated work. In such circumstances the Organization has the burden of proving exclusive reservation by custom, practice and tradition. The record shows that although Carmen have, on

occasion, been used to do the work, supervisory personnel have, in the past, also inspected new equipment off the property and prior to delivery. The Organization therefore cannot carry its burden of persuasion on the record and the claim must be denied.

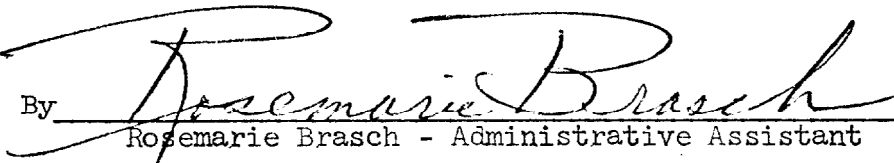
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of July, 1978.