

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Railway Employees' Department, A. F. of L. -
(C. I. O. (Carmen)
(
(Pacific Fruit Express Company

Dispute: Claim of Employees:

1. That the Carrier violated the Controlling Agreement, particularly Rules 23(a), 42(g) and 44(a) when it assigned other than Carmen to perform mechanic's work at their Outside Light Repair Facility located at Fresno, California.
2. That accordingly, the Carrier be ordered to compensate Carmen Manuel Galvan and George Lozano at their Pro Rata rate for each and every working day composed of eight (8) hours each, beginning November 28, 1976 and for every working day thereafter on a continuing basis until this violation of the Agreement ceases.

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.

This claim rests on work performed by Car Service employees, represented by BRAC, at the Carrier's Fresno facilities, in that, to quote the complainant Carmen, the Car Service employees "opened and inspected doors inspected and moved load dividers, cleaned cars and closed doors."

Rules 23(a), 42(a), 42(g) and 44(a) read, in pertinent part, as follows:

RULE 23 (a)

"None but mechanics or apprentices classified as such, shall do mechanics' work except as hereinafter provided..."

RULE 42 (a) - GENERAL CLASSIFICATION

- "(a) Unless otherwise stipulated Carmen's work shall consist of building, rebuilding, maintaining, dismantling (except wood bodies of cars for retirement), painting upholstery, testing and inspecting all cars and parts thereof, both wood and steel including such work on trailers/containers and their appurtenances at Car Shops, established Trailer Repair Facilities, etc.:

NOTE 1 - Clarification of Rule 42 (a):

Re the intended meaning of the term 'established Trailer Repair Lots and Outside Light Repair Facilities, in Rule 42(a) of this Agreement.

It is the company's understanding that this term refers to those points or places on the lines of Union Pacific. Southern Pacific or their subsidiaries where mechanical refrigeration repair work specified in Rule 42(a) is performed or may be performed by employees represented by BRCoFFUS & C. This covers those points now established and such points as the Company may establish at a future date. The presently established Outside Light Repair Facilities are as follows:

Salinas, CA	Edinburg, TX
Fresno, CA	Stockton, CA
Bakersfield, CA	Oakland, CA
North Platte, NE	Portland (Albina and
Council Bluffs, IA	Brooklyn) or
Hinkle, or	Salt Lake City UT..."

RULE 42 (g) - CLASSIFICATION

- "(g) Inspector. Duties shall consist of inspecting cars to be repaired, or that have been repaired, including light. heavy or general repairs and new or rebuilt cars. He must be able to speak read and write the English language and to interpret the A.A.R. Rules of Interchange and Safety Appliance Rules."

RULE 44 (a)

- "(a) Car Cleaners' work shall consist of cleaning bodies and tanks of cars, removal of ice from bodies and tanks of cars; washing interiors of cars, installing and removing car heaters; and

"other work generally recognized as car cleaners' work, including washing of chalk marks from exterior of cars not completely washed."

The claim arose following the relocation of a Outside Light Repair Facility adjacent to a Car Service Facility in Fresno. It is the Carmen's view that the functions performed at this location now form a single Outside Light Repair Facility coming within the jurisdiction of the Carmen. The Carmen further contend that the work involved in that of "inspection" in the sense usually applied to work within their jurisdiction.

On a number of grounds, the Board finds the claim deficient.

1. Without contrary proof from the Carmen, the Carrier and the third party involved (BRAC) argue that the work involved is Car Service employees' normal work, that of determining which cars are ready for use by shippers and which should be set aside for possible repair (by Carmen). Further, this has been the case for the past 40 years. No recent change in work assignment is here involved.

There can be no determination that the Car Service employees' functions in selecting and preparing (non-mechanically) cars for active use represents "inspecting cars to be repaired" as covered in Rule 42 (g). Award No. 7518 (Marx) discussed the varying definitions which can be applied to the concept of "inspection", including reference to numerous previous awards. In the present case, "inspection" for the purpose of mechanical certification is not the thrust of the work; rather, the work is that normally performed by Car Service employees within their usual functions.

2. Guidance must also be sought from the specific Memorandum of Agreement, involving the Carrier, the Carmen, and BRAC (Clerks), "in settlement of disputes arising out of Carmen's Section 6 Notices dated May 6, 1968, and September 17, 1971, as well as all issues raised in National Mediation Board Case A-9270." This Memorandum of Agreement is to remain in effect until at least December 31, 1978. Section I (e) of this Memorandum of Agreement reads as follows:

"(e) Outside of established Car Shops, when not in direct connection on refrigeration units of refrigerator cars, trailers, container and analogous equipment consisting of starting, refueling, protective service and preservice inspections, loading and pre-load inspections, controlling temperatures by adjustment of controls while under load, or in preparation to load, as well as preparation of related records, will be performed by employees under the Clerks' Agreement; it is also understood Clerk employees may perform minor service replacements or adjustments as part of said duties."

As indicated above, the Board finds that the proximity of the Outside Light Repair Facility does not make the nearby locale of Car Service work a "Car Shop". Section I (e) of the Memorandum of Agreement is applicable here.

3. The findings here represent no encroachment on those duties reserved exclusively to Carmen. For example, this case can be readily distinguished from that covered in Award No. 7594 (Yarborough) in which a Carmen's claim was sustained because it was found that a Foreman did more "than a supervisory walk-through to see if work was properly done. The fact that his walk-through resulted in a decision not to have a Carmen inspect the cabooses showed that the Foreman's action was indeed an inspection." In the present case, Car Service employees were performing functions unchanged for many, many years, in which Carmen's responsibilities begin only when cars are turned over to them for mechanical inspection and, as required, repair.

With these findings, it is not necessary for the Board to examine the credentials of the two Claimants in this dispute to determine, even if a violation of Carmen's rules were found, whether they had standing to make a claim.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of October, 1978.