

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Rules 26(a) and 117 of the controlling agreement May 4, 5, 6, 7 and 8, 1981, when they assigned Car Foreman E. Kelzer to inspect freight cars at Haven, Mt. Hope, Argonia, Anthony, Norwich and Hutchinson, Kansas.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen N. L. George, D. J. Brownlee, D. A. Gross, O. L. Robinson and R. L. Haynes in the amount of eight (8) hours each at the punitive rate.

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 employes 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.

Essentially, this dispute focuses on whether:

1. Foreman Kelzer did inspect the freight cars involved;
2. If so, that such an inspection was the exclusive right of Carmen; and
3. Whether the Claimants as Carmen had seniority rights to the work involved.

The pertinent provisions of the Rules involved are:

"Assignment of Work

Rule 26(a). None but mechanics or apprentices regularly employed as such shall do mechanics work, as per special rules of each craft, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in their exercise of their duties to perform work."

"Carmen Classification of Work:

Rule 117. Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, painting, upholstering and inspecting of all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops;... pipe and inspection work in connection with air brake equipment on passenger and freight cars;..."(emphasis added).

"Rule 137

8. Home point: Wichita, Wichita to Genesea, Wichita to Hardtner, Pueblo to but excluding Salina, Wichita to Durand, El Dorado to McPherson, Radium to Belle Plaine."

The Carrier asserts that many people other than Carmen inspect cars, and then cites only the example of shippers doing so on trackage running on the shippers property. In the Board's opinion this is not very persuasive, and the instant case does not involve inspections by shippers.

The Carrier also asserts that Rule 117 limits Carmen's exclusivity rights to work performed only in a shop. This is a very strained reading of a grammatically impossible rule. The logical outcome of this reading would be that the repair, maintenance and inspection of "steel" freight cars would be called carpentry.

While Carrier disputes Claimants' rights to a penalty payment for the work involved, it does not offer contradictory evidence to the existence of the seniority district covering the points, and to which Claimants are assigned.

In the instant case, Carrier had stored 3,000 cars on various sidings along the line of road between shops (for the obvious reason of not clogging up shops and main yards), pending use in the grain shipment season. One can assume that 3,000 cars is not a small or casual number of cars, but a rather significant job. The inspection in dispute was to determine which cars needed repairs, the nature of the repairs needed, and where these repairs should be made.

Under the relevant Rules, it is the Board's opinion that it would be the Carmen's job to determine which cars needed repairs by making an inspection and detailing what repairs were necessary. It would be the Foreman's job to supervise the Carmen and to determine where these repairs should be made.

The Carrier sent one Foreman and one Carman to do this job. Carrier states that Foreman Kelzer went with Mr. Besse to decide, once repair needs were determined, how to distribute the cars needing repairs to "...various ...repair facilities...." The Organization states that the Carman inspected one side of the cars (and, apparently, the tops) and the Foreman inspected the other side of the cars. It offers Bad Order cards signed by the Foreman as proof that he made these inspections and thus did Carmen's work. Carrier implies that these cards are somehow improper, though examination of the exhibit does not substantiate the assertion. Carrier further asserts that the Organization offered no proof that the Foreman did this work, in spite of the signed Bad Order cards. Given these signed cards, and the burden of proof having thus been shifted to the Carrier, it would seem that Carrier would have solicited some written statement from the Foreman if he had not, in fact, made the inspection and signed these cards.

In the Board's view it is reasonable to conclude that inspecting 3,000 cars was a major job, and that the Foreman decided to expedite the process by doing some one third to one-half of the work. Under the terms of the Agreement, the assignment of another Carman was appropriate, and each of the named Claimants is entitled to one day's pay at the punitive rate.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1985.