

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employees:

1. That the DM&IR violated the terms of our current Agreement in particular Rule 57 and 29 when they used Car Foreman LeRoy Hieb to inspect and bad order cars on Hill Ore Train within the Proctor Yard where carmen were regularly assigned and on duty on December 17, 1981.

2. That accordingly, the DM&IR be ordered to compensate Carman J. H. Norstorm in the amount of four (4) hours at the straight time rate for December 17, 1981.

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 employees 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.

The Organization contends that Carrier violated Rules 57 (Classification of Work) and 29 (Assignment of Work) of the Controlling Agreement when a Car Foreman was used to inspect and bad order cars on a Hill Ore Train within Proctor Yard on December 17, 1981. By way of background, the primary function of yard jobs at this large terminal situs is to transfer ore trains to other switching districts in the Duluth Superior area. Frequently, this involves transfer to the Duluth docks, where other crews take charge of the train for dumping ore into the docks. It is the Organization's position that said action by the Car Foreman was an impermissible arrogation of protected Carmen's work under Rule 57 and inconsistent with the past interpretative holdings of the Division. (See Second Division Award Nos. 5953, 7594, 8127.) Moreover, in response to Carrier's basic position that the Car Foreman was merely assisting the train crew in inspecting the brake equipment, the Organization asserts that the Car Foreman actually inspected the cars as an antecedent step to his determination to bad order and set out the cars.

Carrier contends that such work did not infringe upon the Agreement rights of the Carmen's Craft, since train crews as an incidental function of handling the movement of trains perform air tests and brake inspections. It avers that the Organization was mindful of this fact as evidenced by its (Organization's) acknowledgement that train crews historically perform incidental inspections, but observes that the instant claim was filed in protest to the Car Foreman's involvement. It maintains that because train crews routinely perform these tests and inspections, it is of no consequence whether a Car Foreman assists them. It notes that prior awards of the Division dealing with the interpretative application of similar Rules have uniformly held that it was permissible for train crews to perform such work when incidental to the handling of trains. (See Second Divison Award Nos. 4963, 6031, 5485.)

In considering this dispute, the Board concurs with the Organization's position. We agree with Carrier that the train crew performed permissible incidental work on December 17, 1981, but we are not convinced that the Car Foreman did not perform inspection work. From the facts presented and particularly the duration of the inspection it took more than one (1) hour to conduct the inspection. We find no persuasive rebuttal to the Local Chairman's letter of March 21, 1982, wherein he asserted that the inspection took the better part of one and one-half hours, and no supportive indication that it was de minimis work. In effect, it required his professional input to assess the actual condition of the four (4) defective cars and then again his follow through decision to bad order and set them out for repair. Since the work extended beyond the normal purview of the train crews incidental functions and necessitated a corroborative qualitative judgement, it should have been performed by a Carman. To be sure, an allowance for train crews is allowed by Rule and decisional precedent for definable incidental work, but it does not extend to Car Foremen when inspection assistance is required. Rule 7 cannot be ignored.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January 1986.