

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: (
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Louisville & Nashville Railroad Company improperly allowed the employes of the Southeast Coal Car Company to perform the work of closing hopper doors and related repair work on freight cars on the Camp Branch Spur of the Carrier's property on March 3, 5, 9, 10, 13, 16, 21, 23, 24, 26, 28, 30, 31, April 1, 3, 4, 6, 7, 9, 13, 14, 15, 17, 18, 20 21, 22 23, 24, and 25, 1981 and subsequent thereafter.

2. Accordingly, the Louisville & Nashville Railroad Company should be ordered to compensate Hazard, Kentucky Carmen J. Chaney and K. A. Akemen six (6) hours each at the time and one-half rate of pay for Southeast Coal Company employes performing Carman's work on empty coal cars on March 3, 1981 and compensate each of the following as listed:

J. L. Adkins & C. Hunt	March 5, 1981
D. Combs & H. C. Maggard	March 10, 1981
F. J. Reeves & J. B. Cornett	March 13, 1981
H. C. Maggard & L. Adkins	March 16, 1981
G. Hurt & F. J. Couch	March 21, 1981
J. L. Adkins & F. L. Couch	March 21, 1981
O. G. Gabbard & J. D. Cornett	March 24, 1981
H. C. Maggard & W. L. Nixon	March 26, 1981
G. Hurt & F. J. Couch	March 27, 1981
L. L. Henderickson & O. Gabbard	March 28, 1981
W. L. Nixon & L. L. Henderickson	March 30, 1981
W. L. Nixon & L. L. Henderickson	March 31, 1981
O. G. Gabbard & F. J. Reeves	April 1, 1981
W. L. Nixon & L. L. Henderickson	April 3, 1981
O. G. Gabbard & F. J. Reeves	April 4, 1981
D. Combs & O. G. Gabbard	April 6, 1981
J. D. Cornett & J. Chaney	April 7, 1981
W. L. Nixon & J. d. Cornett	April 9, 1981
J. Chaney & L. L. Henderickson	April 13, 1981
J. Chaney & G. Hunt	April 14, 1981
L. L. Henderickson & O. G. Gabbard	April 15, 1981
J. D. Cornett & F. J. Reeves	April 17, 1981
J. Chaney & L. L. Henderickson	April 18, 1981
H. C. Maggard & W. L. Nixon	April 20, 1981
J. D. cornett & L. Jent	April 21, 1981
J. Chaney & L. L. Henderickson	April 22, 1981
J. L. Adkins & D. Combs	April 23, 1981
F. J. Reeves & G. Hunt	April 24, 1981
D. Combs & F. J. Reeves	April 25, 1981

3. Also, the Louisville & Nashville Railroad Company should be ordered to compensate the first out two (2) Carmen on the Hazard Kentucky, Repair Track Miscellaneous Overtime Board six (6) hours each at the time and one-half rate of pay on each date subsequent to April 25, 1981 that the employes of the Southeast Coal Car Company close and repair hopper doors on trains on the property of the Louisville & Nashville Railroad Company.

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.

In this dispute, the Organization argues that Carrier violated the Controlling Agreement when employees working for the Southeast Coal Company performed protected Carmen's work on Carrier's property. In particular, it contends that on March 31, 1981, prior to the departure of a train of mixed empty hopper cars from Camp Branch Spur, employees from the Southeast Coal Company crossed over onto Carrier's property and closed all open or unlatched hopper doors and performed related repairs. The Claim as initially filed on May 1, 1981 also charged that similar type violations occurred on numerous other dates following the first asserted violation.

In defense of its Claim, the Organization asserts that Rules 104 and 30(a) unmistakably reserves this work to the Carmen's craft and it was a breach of these rights when non Carrier employees performed contractually protected work. It avers that Carmen assigned at Hazard, Kentucky were readily available to perform this work and should have been called to perform it. It maintains that contrary to Carrier's contention that the work was actually performed off the property, Camp Branch Spur is located within the geographical bounds of Carrier's property.

Carrier denies that employees of the Southeast Coal Company made any on situs repairs to the hopper cars, and asserts that the Organization has not established this point. It avers that the coal company employees merely inspected the train for open hopper doors that were open in order for the cars to be loaded. It argues that the type of inspections conducted were not for the purpose of determining whether repairs were needed, but only to insure that the doors were closed. In effect, it contends that the work did not require the skills or training possessed by Carmen.

In our review of this case, we agree with the Organization's position. From the record, we are convinced that Camp Branch Spur is located on Carrier's property, and also that the Southeast Coal Company's employees were performing protected work. To be sure, we are not unmindful that work performed by the coal company's employees was not of a significant technical nature, but it was nonetheless inspection work that was not incidental to an identifiable main function. Minor repairs were evidently necessitated and even if of limited nature were still covered by Rules 104 and 30(a) of the Carmen's Agreement. As such, the Agreement was violated.

On the other hand, we do not agree with the compensatory remedy requested by the Organization since it amounts to a penalty payment and is inconsistent with prior compensatory awards of this Division. Rather, the pro-rata rate is the proper rate for work not performed. (See Second Division Award Nos. 8708, 8161.) We will sustain the Claim at this rate but only for the dates actually cited in the Employee's Statement of Claim. This means only for the days cited in March and April, 1981.

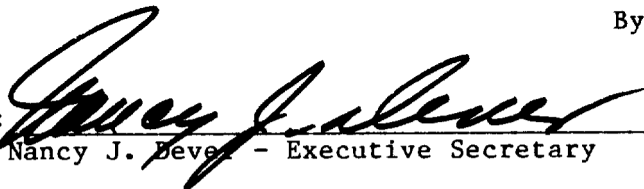
AWARD

Claim sustained in accordance with the Findings.

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.