

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood Railway Carmen of the United States and
(Canada

Parties to Dispute: (
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the Soo Line Railroad Company violated Rules 27, 28, 94 and 99 of the Shops Crafts Rules, when on dates of August 12, 18, 20, 21, 25, 27 and September 2, 4, 9, and 22, 1981, the Soo Line Railroad Company allowed Mr. T. F. Kuduk, Supervisor Car Services, and Mr. L. G. Dunivan, Car Shop Foreman at Shoreham Shops Minnesota, to perform the carmen's work in inspect and mark up defects on the freight cars as they were brought in on the east end of the carshop, No. 3 & 4 track, for repair.
2. That accordingly, the Soo Line Railroad Company be ordered to compensate Carman James Shepard at penalty time, 2 and 2/3 hours, at time and one-half for each day, as shown above, when the Supervisor or Foreman performed the carmen's work of inspecting freight cars and marking up the defect on the cars, when not allowing Carman Shepard to perform the inspection of cars by assigning him to other duties.

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 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 Claimant in this case is James Shephard, a Carman at the Carrier's Shoreham Shops, Minnesota. On eleven days in August and September, 1981, it is claimed that Foreman L. G. Dunivan and Car Shop Supervisor T. F. Kuduk inspected and marked up the defects on freight cars. The essence of this dispute revolves about whether or not Dunivan and Kuduk performed work which is of a managerial nature or whether or not they were inspecting for additional defects after the cars were already bad ordered.

Dunivan initially responded on October 10, 1981, and said he believes it was his duty and obligation to look the cars over so he would know what was coming into the Car Shop for repair. The Manager of Shops, B. A. Nelson, responded on December 10, 1981, that it is the responsibility of the Foreman to insure that all defects are written up and that the defects written up are legitimate. The Board concurs with the above statements and finds them in line with Award 8127.

On May 14, 1982, the Carrier wrote to the General Chairman and stated:

"The work complained of has historically been performed by supervisors and car inspection is not exclusively Carmen's work."

This Board detects a change in the Carrier's original position, and, in effect, does not deny the two Supervisors were inspecting for defects. In fact, Kuduk's statement of October 10, 1981, indicates he believes that, once a car is initially bad ordered and moved, he has the responsibility to check and mark up any defects he finds.

This Board has consistently expressed itself when a practice is raised in the face of clear and unambiguous language. Regardless of how long enduring, resort to such proof is not relevant when a rule is clear and specific. As stated by Referee Marx in Award 8127:

"We have long held that inspection of freight and passenger cars is contracted to Carmen"


Given the acknowledgment of Kuduk, it is evident he was marking up defects as a matter of course and not as an isolated discovery of an overlooked defect. This action is quite distinguishable from work claimed to be strictly for supervisory purposes.

A W A R D

Claim sustained at the applicable pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1986.