

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(The Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That the Belt Railway Company of Chicago violated the terms and conditions of the current working Agreement, specifically Rules 10, 18, 19 and 91 when they allowed Assistant Car Foreman Hans Walters to perform carmen checkers' work on January 24, 1985 at approximately 5:25 a.m. at No. 1 lead pocket West Hump Approach.

2. That the Belt Railway Company of Chicago be ordered to compensate Carman Checker Joe Romanowski eight (8) hours' pay at the time and one-half rate of pay account of the referred to violations of Agreement rules on January 24, 1985.

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.

As third party in interest, the American Railway and Airway Supervisors Association was advised of the pendency of this case, and chose not to file a Submission with the Division.

On January 24, 1985, at approximately 5:25 a.m., a derailment occurred on the Carrier's #1 West Approach Track. An Assistant Car Foreman was sent to the scene of the derailment to record the hours worked by an outside contractor and to prepare a rough damage estimate of the five cars involved in the derailment.

The Organization contends that the Assistant Car Foreman performed Carman Checker's work on the date in question. To the Organization, this is

work exclusively reserved for Carmen on the Carrier's property, and therefore Carrier is alleged to be in violation of Rules 10, 18 and 91 of the parties' working Agreement. While acknowledging that there have been other occasions when a Car Foreman performed work considered to be within the Carmen's craft, the Organization asserts that these previous incidents cannot modify or amend the unambiguous language of Rule 91 which specifically states that inspecting freight cars is Carmen's work. In further support of its position, the Organization proffered a series of job bulletins dating from 1957 to 1985 which purport to substantiate its position that carmen checkers perform inspection work upon cars. For these reasons, the Organization requests that the Claim be sustained in its entirety.

Carrier argues that the Organization's contentions are without merit and are based upon a failure to recognize the fact that the work performed by the Assistant Car Foreman was a managerial prerogative which was separate and apart from any work reserved to the carman checker position. Carrier further maintains that Car Foremen have historically performed on-site estimates in order to expeditiously apprise car owners of the approximate damages involved and to promptly inform shippers and consignees of the length of time delays are likely to occur.


After careful review of the record in its entirety, the Board concludes that the Organization failed to prove that the inspection of damaged cars involved in this case is exclusively a carman checker function. The Board notes that the evidence with respect to past practice is presented on the record as to the precise work and work assignments involved in this case does not support the Organization's claim. The job bulletins proffered by the Claimants merely established that Carmen's work has been confined to repair tracks; from the record it appears that all inspection of damaged cars is not, and never has been, exclusively a carman checker function. In the absence of an express assignment of work by a specific rule or provision of an Agreement, and the Organization having failed to establish that the work at issue belongs to or has been performed exclusively by carman checkers in the past, we fail to find violation of any Agreement rule. Accordingly, the Board rules to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of September 1987.