

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Louisiana and Arkansas Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Southern Railway Company violated the controlling agreement, particularly Rules 72 and 28, when they arbitrarily assigned Mechanical Foreman M. L. Huckaby to inspect cars loaded with pipe coming out of Stupp Corporation for tiedowns on loads, mechanical defects and safety appliances on six cars on August 24, 1988.

2. That accordingly, the Kansas City Southern Railway Company be ordered to compensate Carman G. W. Cook, Baton Rouge, Louisiana, in the amount of four (4) hours at the straight time rate for August 24, 1988 as he was available to perform this carmen's work.

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 dispute, but chose not to file a Submission with the Division.

On August 24, 1988, one of Carrier's Mechanical Foreman "inspected" six cars loaded with pipe on the property of a shipper to "oversee that [the] cars were being loaded in accordance with AAR rules" before they were moved from the industry to Carrier owned trackage. After acceptance of the shipment the cars were again inspected by Carmen assigned at Carrier's Baton Rouge Yard. The Organization claimed that the inspection completed by the Foreman was work reserved to Carmen under its Agreement.

In support of its arguments the Organization relies, inter alia, on Second Division Awards 10678, 10825, 11519, 11676, and 11934 which held that the Carmen's Agreement was violated when supervisors performed inspections under various circumstances dealt with therein. In its defense, Carrier stresses that the "inspections" were designed to ensure that the cars were properly loaded and secured, did not occur on its lines at a point where the Carmen's Agreement was applicable, and when examined the shipment was not under its control.

Each of the Awards cited by the Organization involved situations where the complained of inspections examined the cars for mechanical defects and occurred on trackage under the control of the carrier there involved. In such situations the Awards were appropriate.

However, we have problems extending the application of the Awards cited to an activity occurring at a shipper facility when the "inspection" does not involve checking the cars for mechanical defects, but instead is for the sole purpose of ensuring that loading was proper and in compliance with AAR rules and the cars are then given a regular inspection by Carmen when accepted for shipment. In these circumstances, it must be demonstrated that the Carmen's Agreement is applicable to the "inspection" which occurred at the shipper facility. This has not been done here.

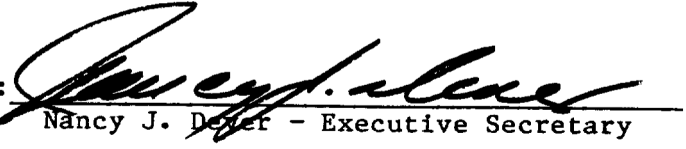
The Claim is without merit. It will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1991.