

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13381

Docket No. 13273

99-2-97-2-47

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore & Ohio
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Carrier overstepped the controlling Agreement when it required Carmen incumbents of transportation yard inspectors positions to possess valid driver licenses.**
- 2. That the Carrier be ordered to remove the requirement that Carmen incumbents of transportation yard inspectors positions possess valid driver licenses.”**

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 employee 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 were given due notice of hearing thereon.

The Carrier abolished all Carmen positions in its Cumberland Transportation Yard and then re-advertised them with a new qualification. This qualification was that all incumbents of Yard Inspector positions have a valid driver's license. According to the record there were three vehicles in the yard that were licensed to be driven on public roadways. There are other vehicles that were driven only on company property. According to the Carrier the reclassification of the positions was necessary also to better utilize the work force.

A claim was filed by the Organization on grounds that the reclassification of the Yard Inspector position was in violation of various Rules of the current Agreement. According to argument put forth by the Organization the Carrier's changes in the job definition of Yard Inspector "... restrict(ed) the contractual bargaining right of senior qualified Carmen to avail themselves (of) Inspector positions which in reality do not require their operation of any motor vehicle in the performance of their duties."

Under the new requirement unilaterally imposed by supervision it was now necessary for Carmen to hold a valid drivers license in order to hold a Yard Inspector job at Cumberland Transportation Yard. The contractual issue at bar here is whether such requirement imposes restrictions on Carmen rights otherwise protected by the Agreement.

Under Rule 28 Carmen have the right to exercise seniority. Classification of Work Rule 138 is quite specific about Carmen work which is to build, maintain, dismantle, paint, upholster and inspect passenger and freight cars. This Rule also outlines certain work which Carmen do to locomotive cabs, inspection work which Carmen do to rail cars as well as "... all other work generally recognized as Carmen work..." Rule 143, which deals specifically with inspection work, states that "... men assigned to inspecting work must be able to speak and write the English language, and have a fair knowledge of the AAR rules and safety appliance laws..." Rule 142 goes into detail about work done by Carmen under title of coupling, inspection and testing of cars.

Nowhere in the language of these Rules does it state that the possession of a valid drivers license is a requirement to perform Carmen duties. The Rules in question do not address that specific issue. The Carrier argues that the right to change the job description of Car Inspectors is supported by arbitral precedent. For example, the Carrier cites Third Division Award 23551 which states that "... numerous Awards of

this Board have held that a Carrier has the prerogative to determine when, where, and by whom work will be performed. Unless prohibited by the negotiated agreements, it has the right to re-arrange existing work assignments, including the abolishment of unneeded positions. . . .” It also cites Third Division Award 19596 which states that “. . . it is well settled that management has the right to determine how, when and where work shall be performed. . . .” Further, the Carrier cites Third Division Award 16458 which states that “. . . it is the function of management to determine the manner and place where work shall be done. . . .”

The Board has studied these Awards dealing with management rights. It does not believe that they are sufficient to permit management, in the instant case, to basically disqualify a whole class of employees from exercising seniority and from performing duties as outlined in the Agreement’s Classification of Work provisions at a location such as Cumberland Transportation Yard. Further, there is no evidence of record provided by the Carrier that all Car Inspectors at the Cumberland Transportation Yard will even be required to drive the licensed vehicles on public roads. Obviously the logistical and managerial requirements by management in the instant case must be weighed against the seniority and job classification protections of the collective bargaining unit members. In the instant case the Carrier has not presented sufficient evidence that its unilateral actions against a whole class of employees protected by contract, related to but a detail of the job, which may not even (or ever) be performed by any specific Car Inspector, are warranted. Obviously such conclusion has nothing to do with certain other conclusions arrived at by the Awards cited in the foregoing such as the management right to abolish positions given lack of work and so on.

More pertinent to the instant case is more recent Third Division Award 32876 issued on this property albeit with respect to another craft. In that Award the Board found no problem with management placing new requirements, such as licensing, on an actual bulletined position. In its conclusions here the Board would not rule otherwise.

On basis of the full record before it the Board concludes that the claim must be sustained. Management of the Carrier has “overstepped the controlling Agreement”, as the Organization puts it, by requiring that incumbents of Transportation Yard Inspector positions, as a general matter, possess a valid drivers license.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 12th day of April 1999.