

Award No. 863

Docket No. 811

2-FGE-CM-42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L.
(BROTHERHOOD RAILWAY CARMEN OF AMERICA)**

FRUIT GROWERS EXPRESS COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (A) Under the provisions of the controlling agreement, the below named senior carmen are each entitled to eight hours pay on July 24, 25, 28, 29, 30 and 31, 1941, at shop rates of 73½ cents per hour for inspectors and 66 cents per hour for repairers:

Seniority Rank	Name	Wage Loss
No. 1	Andrizie Papirowski	\$35.28
No. 2	John Rusin	35.28
No. 3	George Ridgeway	35.28
No. 4	Walter Smith	35.28
No. 5	W. R. Dove	31.68
No. 6	Tony Caporaletti	31.68
No. 7	J. W. Gorham	31.68
No. 8	J. R. Towsey	31.68
No. 10	J. W. Dameron	31.68
No. 11	Marcello Nardinocchi	31.68
No. 12	R. K. Chappelle	31.68

(B) Under provisions of the controlling agreement, the below named carmen regularly employed as such, are each, entitled to eight hours pay on July 29, 30 and 31, 1941, at the shop inspectors rate of 73½ cents per hour:

Seniority Rank	Name	Wage Loss
No. 13	C. B. Hansbrough	\$17.64
No. 14	Samuel Gorham	17.64
No. 15	Eli Dzidich	17.64
No. 17	Wm. Herold	17.64
No. 18	Jim Guiseppe	17.64
No. 19	J. W. Polkinhorn	17.64
No. 20	Wesley Prisaznich	17.64

EMPLOYEES' STATEMENT OF FACTS: At 4 P.M. July 23, and until 7:30 A.M. August 1, 1941, the carmen named in the above statement of claim, among many others, were laid off by the company.

The company retained in the service on July 24, 25, 28, 29, 30 and 31, 1941, carmen in seniority rank and classification as follows:

4. The past right and practice of having inspections done by foremen and other supervisors when their time permits never has been waived or abrogated; such inspection is not "mechanics' work," either literally or as practically construed in respondent's shops, so Rule 14-A does not apply.

ARGUMENT.

Respondent wishes to participate in the hearing requested by the complainants, and reserves the right to submit further facts and argument in rebuttal to their position; but now submits no further argument than the foregoing statement of facts and the supporting statements of Messrs. Roth (Ex. 1), Sweeley (Ex. 2), Nagel (Ex. 3), and Smith (Ex. 4) and their discussions of the rules applied to the facts.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

The employes involved in this dispute are governed by Rule 15 (a):

"Seniority of employes shall be determined by length of service in one of the following departments and shall be confined to the point at which employed. . . .

Car erection and repair. . . ."

This is further confirmed by the fact that these employes are carried on a common seniority roster designated "Car Erection and Repair."

The record is clear that the instant reduction in force was a violation of the current agreement.

However, considering all the circumstances involved in this particular dispute, the claim for compensation is disallowed.

AWARD

Claim sustained in accordance with the above findings without compensation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of November, 1942.