

Award No. 918

Docket No. 868

2-DL&W-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: A—That on and subsequent to August 21, 1942, the carrier at the Elmira Train Yards, did arbitrarily and has persistently violated the controlling agreement and Rules 27, 98, and 106 thereof by

- (1) The substitution of trainmen for a carman on each shift at the head end of trains.
- (2) The transferring of carmen's work to the trainmen.
- (3) The abandonment of the use of blue signals at the head end of trains for the protection of carmen working on said trains.

B—That in consideration of the aforesaid violations, the carrier be ordered to—

- (1) Restore to carmen the work which they performed which was transferred to the trainmen on August 21, 1942.
- (2) Restore to carmen the protection of blue signals at head end of trains on which they work.
- (3) Pay the carmen damaged, one carman on each shift, each day, in rotation consistent with their off days, eight hours at rate and one-half, retroactive to and including August 21, 1942.

EMPLOYEES' STATEMENT OF FACTS: The carrier at Elmira, New York, employs in the train yard three shifts of carmen. They regularly work six days a week within a spread of seven days. They are regularly assigned one day off in each week. They are paid straight time for work performed on Sundays and holidays. They are paid time and one-half for any work performed on their regularly assigned days off, because that day off is regarded as their Sunday.

The capacity of the tracks in the Elmira yard is approximately 65 cars. Most of these out bound trains handle from 95 to 105 cars per train and due to this inadequate trackage, these trains have to double over in making them up to the extent of 30 to 40 cars.

In that case all the trainmen walked along the side of the train to ascertain whether the brakes were set on all cars. In the instant case all that is done is that one trainman passes the final "apply" and "release" signals to the engineer.

Rule 106 was not violated. As the statement of facts shows, all the inspection and work is completed by the time the departure "apply" and "release" signals are relayed to the engineman, and hence there is no need for a blue flag on the engine.

Since there has been no violation of the controlling agreement part B of the claim must also fail.

No work has been taken away from the carmen.

Under the present routine the force of car inspectors at Elmira has not been reduced but increased. There are no carmen at Elmira on furlough. The carmen have lost nothing by the change in routine at Elmira and the departure of trains has been accelerated an average of fifteen minutes, a substantial contribution to operating efficiency of which the carrier should not be deprived. Moreover, the law of the state of New York requires one day's rest in seven.

It is respectfully submitted that the claim of the employees that the relay of a brake test signal to the engineer by a member of the train crew is carmen's work is not supported by the controlling agreement.

All data submitted in support of the carrier's position has been presented to the employees' representative during the handling of the claim on the property.

Oral hearing is requested and the carrier desires the right to answer by supplemental submission any point or argument presented by the employees which has not been fully covered by this submission.

The claim should be denied.

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 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.

Under the circumstances disclosed in the record the routine at Elmira Yard following August 21, 1942, does not constitute a violation of the agreement. Of course, should carmen have work to perform after the departure set and release applications and tests are made, such work should be under the protection of the blue flag as required by Rule 106.

AWARD

Claim (A) Denied.

Claim (B) Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.