Award No. 1369

Docket No. MC-1268-60

2-LT-I-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

LOCAL UNION 2186, UNITED STEELWORKERS OF AMERICA, C. I. O.

THE LAKE TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: The claim, designated as Grievance C-21, reads: Time claimed by Mr. Januszewski for National Tube Company men inspecting and repairing foreign cars on tracks 4501 and 4502, has been denied by Mr. Kerfoot, on the grounds that he has not established the fact that he has a claim. We are attaching a list of cars, interchanged from the NKP and placed on Lake Terminal tracks 4501 and 4502. These cars were inspected and repaired by National Tube Company men. Eight hours claimed for each violation.

Eye bolt adjusted and door closed on NYC hopper 90841 at 9:55 A. M. on Track 4501.

Eye bolt adjusted and door closed on NYC hopper 84839 at 10:50 A. M. on Track 4501.

These empty hoppers were interchanged from the NYC on October 16, 1948, for ore loading.

EMPLOYES' STATEMENT OF FACTS: Tracks 4501 and 4502 are Lake Terminal Railroad tracks. On October 23, 1948, at 11:50 A. M., a train of 58 empty hopper cars were interchanged from the Nickel Plate Railroad and placed for ore loading on Track 4501. A total of 20 cars were inspected and doors closed by industry employes.

On October 24, 1948, at 1:40 P. M., a train of 55 empty hopper cars were interchanged from the Nickel Plate Railroad and placed for ore loading on Track 4501. A total of 26 cars were inspected and doors closed.

On October 24, 1948, at 12:35 P. M., a train of 52 empty hopper cars were interchanged from the Nickel Plate Railroad and placed for ore loading on Track 4501. A total of 11 cars were inspected and doors closed.

A list of cars will be found, submitted herewith, marked Exhibit A.

On October 16, 1948, at 9:55 A. M., eye bolt was adjusted, and door closed on NYC hopper 908041, on Track 4501.

On October 16, 1948, at 10:50 A. M., eye bolt was adjusted, and door closed on NYC hopper 848389, on Track 4501.

To adjust this eye bolt, which must be done when the hopper door will not close, it is necessary to go below the car. The bolt is 11" long by 3/8" diameter. To adjust, it was necessary to use a hand hammmer to loosen the nut.

POSITION OF EMPLOYES: Because the doors would not shut on these two cars without the adjustment, the union considers this a repair in every sense of the word.

As added proof that industry employes do repair these cars, we submit herewith a foreman's daily time sheet, issued to the Dock Department, by National Tube Company, Lorain Works. Under the heading "Description of Work in Full", the fifth item reads as follows: "Repairing Shipment Ore Cars." This is carried as Exhibit B in this submission.

The company takes the position that the question of closing doors has already been taken to the Board. On October 19, 1948, the question of closing doors and bleeding the air on foreign cars by industry employes was taken before the Board, in a case designated as C-19. The union endeavored to introduce the evidence, designated as Exhibit B, in the instant case. The Board refused to allow it, because no mention of repairs was made on the face of the grievance. Therefore the union is processing this case without prejudice to its stand on C-19.

It is the contention of the union that the work involved is maintenance and inspection work, and therefore is subject to Article XIII, Section 4, Rule 1, of the agreement which states "Employes in the Car Department, shall consist of carmen (inspectors and repairmen), apprentices, other craftsmen, helpers, and laborers, and only carmen and apprentices shall do work generally recognized as carmen's work."

We feel that repairing and closing doors by industry employes is in violation of our agreement, and ask this Honorable Board to so rule.

CARRIER'S STATEMENT OF FACTS: In this claim it is contended by the union that National Tube Company employes are inspecting and repairing cars on Lake Terminal Railroad tracks when they are closing doors on hopper cars placed for iron ore loading. This claim is not only distinctly connected, but also on "all fours" with another claim taken by the United Steelworkers of America to the Second Division in 1948, and known as Docket MC-1237, and for this reason the carrier expressed a desire to hold this case in abeyance until an award had been handed down in Docket MC-1237. The inspecting and repairing of cars referred to by the union deals with the adjusting of an eye bolt on certain NYC hopper cars.

POSITION OF CARRIER: The point at issue in this case between the union and the carrier is whether the adjustment of eye bolt on certain NYC hopper cars can be properly classed as repairing of cars. This adjustment is made for the sole purpose of closing the doors on these hoppers. It is in no sense repairing, but performed entirely in connection with closing of doors.

In our opinion, this matter solely concerns the closing of doors which is covered by Docket MC-1237 and we therefore have nothing further to add.

For the reasons herein outlined, the carrier submits that 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 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.

This is a monetary claim based on an alleged violation of Rule 1 under Section 4 of Article XIII of the parties' agreement effective June 19, 1945. Rule 1 is a scope rule. The only work performed by industrial employes on which the claim can be based is the adjustment of eye bolts in connection with the closing of doors on hopper cars when the same had been placed on carriers' tracks for the purpose of loading ore. To repair is the process of repairing or to restore to a sound or good state. The work done, although apparently neither difficult nor requiring any great length of time, is repair work. It is repair work of the character performed by car inspectors when, upon inspecting cars, they discover the condition.

While claimant was on duty at the time the eye bolts were adjusted it was not his assigned duty to inspect each car before or as it was placed on the track for loading. Neither is it shown that he had actual knowledge of the condition or that the repair was being made. Nor can the carrier excuse itself by the claim that it did not know the industrial employes were making these repairs for it is its duty to police the rules of the agreement and see that its provisions are complied with. Carrier should have so advised the industries which were using its facilities. The work here performed by industrial employes in repairing the eye bolts of the hopper doors was a violation of the foregoing scope rule of the parties' effective agreement.

The essence of the claim is the violation of the scope rule of the agreement. In order to enforce the provisions thereof a penalty must be imposed which is a minimum of one day for each violation. The penalty for a violation of the scope rule of an agreement is the important thing in order to require the carrier to see that it is complied with. The claim on behalf of any particular individual or individuals is only incident thereto. If the organization makes the claim in behalf of certain employes covered by its agreement, and others are not making any claim thereto, the carrier will be fully protected for if it should be required to pay such claim it can not again be required to do so.

However, since both incidents here complained of are exactly the same type of work, occurred at the same location and both within the period of one shift the claim should only be allowed for one period of eight hours.

AWARD

Claim sustained but only for one period of eight hours.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division.

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1950.

DISSENT TO AWARD NO. 1369, DOCKET NO. MC-1268-60

DISSENT OF CARRIER MEMBERS.

In this case, the majority have found that "* * * The essence of the claim is the violation of the scope rule of the agreement. In order to enforce the provisions thereof a penalty must be imposed which is a minimum of one day for each violation. * * *"

The working agreement between the parties does not provide for an eight-hour penalty upon the carrier for less than an hour's work performed, nor does it provide two days' pay for one day's work.

The claimant here was on duty when he observed what he claimed to be a violation of the scope rule.

Such claimant would have received no more than one day's pay had he, during his tour of duty, performed the work in question; but for not performing such work the majority have awarded him an additional day's pay. The working agreement does not contain a minimum day rule but does expressly provide that employes shall be paid on an hourly basis.

Thus, the majority have awarded a penalty upon implication, whereas nothing in the working agreement involved specifically provides that the carrier and the employes contracted to pay or to be paid two days' pay for one day's work. For the above reason, the undersigned dissent.

A. G. Walther
J. A. Anderson
C. S. Cannon
M. W. Hassett
M. E. Somerlott