

Award No. 1370

Docket No. 1270

2-T&P-CM-'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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 121, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (Carmen)**

**THE TEXAS AND PACIFIC RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** (1) That under the current agreement it is the duty of carmen and not carmen helpers to connect air hose in connection with the test or repair of air brakes on outbound freight trains.

(2) That the substitution of Carman Helper W. W. Little on September 10, 1948, for a carman, to perform the aforesaid work was improper under the current agreement.

(3) That accordingly, the carrier be ordered to cease, at once, using carmen helpers to perform the aforementioned work.

**EMPLOYEES' STATEMENT OF FACTS:** Fort Worth, Texas, is the largest freight and passenger terminal operated by this carrier whereat a force of car inspectors is maintained around the clock or twenty-four hours daily with eight-hour shifts beginning at 7:30 A.M., 3:30 P.M., and 11:30 P.M. On September 10, 1948, the carrier's local supervision instructed Carman Helper W. W. Little to couple air hose on outbound trains being made up for air brake tests, inspections and repairs preparatory to departure from the terminal. The assignment of Carman Helper Little was protested, following which he was instructed to discontinue the coupling of air hose for a few days. Later on, however, carmen helpers on all shifts were assigned to perform the work. This is affirmed by signed statements of Carmen Helpers W. W. Little, D. L. Newman, W. C. Grantham, H. G. Brunner and J. D. Dodd, dated October 12, 1948, and Carman H. W. Graves, dated March 23, 1949, submitted herewith and identified as Exhibits A, B, C, and D.

This dispute has been handled in accordance with the agreement effective April 1, 1943, as amended, up to and including the highest designated carrier officer to whom such matters may be appealed, with the result that this officer has declined to make any satisfactory adjustment.

**POSITION OF EMPLOYEES:** While negotiating the current agreement, the employees proposed a carmen helpers' classification of work rule reading as follows:

"(a) Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and

work to carmen at loading platforms, or on line of road and in switching cars.

The closing and securing of car doors may be performed by various classes of employes, including carmen, in the regular course of their duties."

In Award No. 682, Carmen vs. Atlantic Coast Line, the dispute involved the claim:

"That coupling air hose and testing air by laborer and trainmen on outgoing trains at Port Tampa, Florida, is in violation of Rule 29, Section F of the agreement; that the practice should be discontinued and that car inspector be reassigned to perform these duties."

Rule 29 (f) of the Atlantic Coast Line agreement was the carmen's classification of work rule which was substantially the same as the Texas and Pacific Rule 81. In its Findings the Second Division ruled

"The evidence of record does not, in the circumstances of this proceeding, disclose any violation of the agreement.

#### AWARD

Claim denied."

From the above discussion of the merits of the claim of Carman Bodiford, it is clear that

1. The work performed by Carman Helper Little of coupling air hose between cars and cuts of cars in the train yard at Lancaster Yard was in connection with switching operations and not in connection with making an air brake test on a train.
2. In this case as in all other such cases, when the air brake test was made, a carman did the work.
3. The Second Division of the National Railroad Adjustment Board has previously ruled on this railroad as well as on many others that the work here involved does not belong exclusively to carmen but may be performed by other employees including carmen helpers.
4. The Second Division has held that the rules here relied upon by the committee do not support claims of this nature.

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The carrier respectfully requests that the claim herein be dismissed for lack of jurisdiction. In the alternative, the carrier respectfully submits that the claim herein is wholly unfounded and without merit and should be denied.

Submitted as carrier's Exhibit A is a copy of the general chairman's letter of appeal of November 22, 1948. Submitted as carrier's Exhibit B-1 is a copy of the carrier's decision of January 10, 1949. Submitted as carrier's Exhibit B-2 is a copy of carrier's mechanical superintendent's letter of November 30, 1948.

**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.

Carrier contends this Division of the Adjustment Board does not have jurisdiction to consider this claim because it is not the same as was handled on the property. See Section 3. First. (i) of the Railway Labor Act. The principle of the claim made on the property is the same as here, the only difference being that the monetary feature thereof has been dropped. We do not find this to be such a change as to defeat jurisdiction. The carrier must have been fully aware, by the claim as made and handled on the property, that the System Federation was contending that it was violating their agreement by having the work done in the manner here complained of. This contention of the carrier we find to be without merit.

This claim involves the contention that carmen helpers are being improperly used in place of carmen to connect air hose on freight cars when such work is being done in connection with the test or repair of air brakes on outbound freight trains. The claim has now been limited to the doing of this work in Lancaster Yard, Fort Worth, Texas, after the cars have been placed on tracks in either the east or westbound advance yards to make up road trains.

Admittedly carmen must be used to connect air hose in connection with the test or repair of air brakes. Likewise helpers may do so if not done in connection with tests or repairs for, as provided by the parties' Memorandum Agreement dated June 18, 1943: "Helpers may connect and disconnect steam and air hose when not in connection with test and repairs."

The question is, when, in connection with tests or repairs of outbound freight trains for road service, does coupling of air hose become a part thereof.

The coupling of air hose on freight cars, after they have been placed on tracks in either the east or westbound advance yards, or on outbound tracks, to become part of outbound freight trains, is preparation work relating itself directly to the work of testing the air brakes on inspection and making repairs thereto, if necessary. Such work belongs to carmen.

#### AWARD

Claim sustained as limited in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1950.