Award No. 1394
Docket No. MC-1317-65
2-P&LE-LE&E-I-'50

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C. I. O.
(Merged with Industrial Union of Marine & Shipbuilding Workers of America, C. I. O.)

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY
THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That within the meaning of the controlling agreement and particularly Rule 27 thereof, employes who are required to perform service not within the confines of the carmen craft are being discriminated against and the rules of the agreement are being violated by the carrier.

That accordingly, the carrier be ordered to discontinue requiring car inspectors to perform work not of the carmen classification, in the instant claim, not to require car inspectors to perform work of the trainmen craft. And further, to compensate employes at the Pittsburgh Terminal, since January 4, 1949, until such practice is discontinued, eight (8) hours additional each day such service is performed at the trainmen's rate of pay.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains at Pittsburgh, Pa., a passenger terminal wherein passenger trains arrive and depart from both directions. Car inspectors are employes at this terminal.

The carrier requires car inspectors in addition to performing the duties of car inspector, also, upon arrival of trains to cut off the engine, signal the engineman to either back up for slack, move forward to make the cut, and then stop. In other instances in addition to the above, car inspectors are required to make a cut in trains, that is, parting of the cars to permit employes and passengers to cross at regular platform crossing going to or from trains to depot waiting room. All this work is being required of car inspectors while train crew who is in charge of said train are standing idly by.

This dispute has been handled in accordance with the current agreement, effective May 1, 1948, and with the carrier's highest operating officer to whom such matters are subject to appeal on more than one occasion, with the result that this carrier officer has declined to adjust this dispute.

The agreement of May 1, 1948, is controlling and is by reference made a part hereof, copy of this agreement is on file with the Board.

POSITION OF EMPLOYES: It is submitted that within the meaning of Rule 27 reading as follows:

Referee Bakke also considered the principle of past practice in Award No. 8169, wherein he states:

> "Working for ten years without protest under carrier's construction of agreement must be construed as a concurrence therein."

In Award No. 8145, Referee Bakke states:

> "It appears that the practice of the carrier complained of began over twelve years ago. The claims were not filed until 1941. Such a delay indicates concurrence on construction of agreement made by carrier."

The Third Division, in its Award No. 4493, held:

> "The Board has repeatedly held that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. Awards 2436, 1397, 1257. We are obliged to say, therefore, that the Carrier could not properly modify or abrogate the practice except by negotiation."

The foregoing discussion with respect to coupling and uncoupling engines and cutting off excess cars on passenger trains applies with equal force to the employes' complaint with respect to signalling enginemen to start and stop.

With regard to the latter complaint, it should be pointed out further that the matter of signalling the enginemen has been done by carmen purely as a matter of custom and convenience, and not in compliance with any instructions ever issued by management. All that a carman would be required to do under these circumstances would be to inform the enginemen or trainmen, as a matter of safety, that the carman has completed his work and has cleared the train.

Conclusion

The carrier's position may be summed up as follows:

1. The carmen have been doing the work here complained of for more than forty years.

2. There is nothing in the carmen's agreement that is violated when carmen perform the work.

3. There is no rule that requires the carrier to pay additionally on the basis of eight hours at trainmen's rate for performing such work.

4. There is no ground on which the Board can give effect to the employes' request that "the carrier be ordered to discontinue such practice".

It is therefore respectfully requested that the employes' claim 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.

The record in this case does not disclose any violation of the current agreement, as the work of coupling and uncoupling of locomotives at the Pittsburgh Terminal is recognized by the parties as being carmen's work, see Carrier's Exhibit C.

The question of signaling enginemen when uncoupling the locomotives will be taken care of by the settlement (Employes' Exhibit B-1) made in the case of the use of "Blue Flags" at Pittsburgh Terminal which case was withdrawn from this Board upon such settlement.

AWARD

Claim denied as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 18th day of July, 1950.