Award No. 1723
Docket No. 1617
2-P&LE-URRWA-CIO-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That it is inconsistent with the current agreement to have the carrier call Mr. C. D. Walters, regular assigned Car Repairman to perform the work of Mr. Crawford Walters a regular assigned Car Inspector, thereby denying Mr. Crawford Walters work that rightfully belongs to him.

EMPLOYES' STATEMENT OF FACTS: On Sunday, March 9, 1952, the yard master at College notified the foreman that an inspector would be needed to inspect cars that were to come to this point. The foreman was notified by the yard master at 12:45 P.M.

Foreman Doyle called two inspectors and getting no satisfaction, instead of trying to call the third car inspector, he called a regular assigned carman for this job.

As car inspector's work belongs to that craft and the foreman called out a regular assigned carman, we are claiming eight (8) hours punitive pay for Mr. Crawford Walters, who is a car inspector and was available at the time.

POSITION OF EMPLOYES: It is respectfully submitted that the work of car inspectors is the work which must accrue to employe's having seniority rights to such class of work.

Rule 50 reads as follows:

Rule 50

"(A)—All vacancies and new positions in the ranks of the employees will be bulletined for a period of five days. All employees may bid on such vacancies and new positions on the basis of their seniority standing at the point employed, and the oldest man bidding on such vacancy or new position will be awarded the position, provided he possesses the necessary fitness and ability. It is distinctly understood that in each and every instance of promotion, the promoted employee will be given every opportunity to qualify.

(B)—Employees desiring to avail themselves of this rule will make application in duplicate, copy to Chairman of Local Committee.

provided that 'time in excess of (8) hours exclusive of meal period on any day will be considered overtime'. The overtime rule clearly means that work performed in excess of eight hours will be considered overtime. Consequently time not actually worked cannot be treated at overtime rate unless the Agreement specifically provides. This conclusion is supported by this Division Awards 2346, 2695, 3049.***"

This same conclusion is also supported by the following Third Division Awards: 3232, 3376, 3251, 3271, 3504, 3745, 3277, 3770, 3371, 3375, 3837, 4073 and 4196.

CONCLUSION

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

1. There is no rule in the agreement which confines any portion of carmen's work in a seniority district to either car repairmen or car inspectors.

2. It has always been the practice to use carmen, within a seniority district interchangeably, to meet the requirements of the service.

3. Car repairmen and car inspectors are both classified as carmen and are covered by the same rules of the same agreement.

4. The work in question is carmen's work and was performed by a carman on the date in question.

5. The employes are bound by their acquiescence to the recognized application of the rules in effect on the carrier's property for many, many years.

It is therefore respectfully submitted that the claim is without merit and therefore must 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.

At College the carrier maintains a maximum daily force of five (5) car repairmen and eight (8) car inspectors. The car inspector positions are spread over three (3) tricks. On Sunday there is one car inspector assigned on each of the three (3) tricks. On the day in question, Sunday, March 9, 1952, an additional car inspector was required on account of a train arriving about 2:15 p. m. A carman, not regularly assigned as one of the regular car inspectors but holding seniority rights as such, was used as the additional car inspector on this date. The employes contend the calling of a car repairman to fill a car inspector position is in violation of the agreement.

In the instant case the carrier called two (2) car inspectors prior to calling the car repairman, indicating a desire to fill the assignment from the ranks of regularly assigned car inspectors. There was at least a technical violation of the seniority provisions of the agreement, but under the circumstances involved, it was not such as will justify the claim for compensation.

AWARD

Claim disposed of in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1953.