

**Award No. 1791**

**Docket No. 1704**

**2-PTRRA-CM-'54**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. (Carmen)**

**PORT TERMINAL RAILROAD ASSOCIATION**

**DISPUTE: CLAIM OF EMPLOYES:** (1) That under the current agreement the carrier improperly assigned other than a Carman to make repairs to ACL Car 21263, SAL Car 24678, RI Car 140992 and SF Car 162077, consisting of inspecting, removing and applying air hose on September 12, 1952.

(2) That accordingly the Carrier be ordered to additionally compensate Carman C. L. Nix in the amount of four (4) hours at the applicable rate of pay.

**EMPLOYES' STATEMENT OF FACTS:** The carrier maintains a car repair track and shop at Houston, Texas. One shift of car repairers are employed six days per week and three shifts of car inspectors around the clock seven days per week. Car inspectors use their own automobiles, for which they are compensated by the carrier, as transportation to and from different switching yards and industries in the Terminal to perform carmen's work on cars and drags when needed.

On Friday, September 12, 1952 Switch Engine Foreman Hall and his crew were instructed to make repairs consisting of inspecting, removing and applying air hose on Cars ACL 21263, SAL 24678, RI 140992 and SF 162077 at the Phillips Chemical Plant. The switch crew was furnished with the necessary tools and materials to make the repairs on the cars. Carmen and car inspectors were on duty at the time these repairs were made by the switch crew and no carmen were called to do the work on the aforesaid cars.

Carman C. L. Nix, hereinafter referred to as the claimant, was available to perform the work if called.

The agreement effective March 1, 1952, as subsequently amended, is controlling.

in connection with carmen's work; painting, varnishing, surfacing, decorating, glazing, saw filing, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in enginehouses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work."

It has always been the practice since the organization of the association in 1924 for switch crews to replace air hose on cars to be moved by their respective crew from outlying industries to principal classification yards of the carrier.

**POSITION OF CARRIER:** The carrier readily admits that switch crew foreman Hall and helpers did exchange air hose on the four cars mentioned in employes' claim. However, the carrier denies any requirement of switch crew to inspect cars, inasmuch as an inspection of cars is not necessary until such time as the cuts of cars are moved into the principal classification yard and classified for interchange to connecting carriers, at which yard carmen are employed around the clock and perform all such inspections. The carrier is a large terminal performing switching service for docks and industries on the north and south shores of the Houston Ship Channel. Many of the industries are large and operate their own switch engines within their plants; in addition to their plant switch engines, tractors and trucks are used for moving rail equipment within the plant. The Phillips Chemical Company is such a plant, using an engine and tractor to move rail equipment. Due to severe curvature of some of the Phillips trackage and perhaps through carelessness of their employes, occasionally air hose are damaged. When the cars are assembled for movement from the plant to carrier's principal classification yard, a distance of eleven miles, it is necessary that air hose be coupled to provide air throughout the cut of cars in order to safely operate the cut of cars to the classification yard. After the air hose have been coupled and air cut in from locomotive, an intricate inspection is not required to determine there are bursted air hose on cars in the cut. The yard crews are not used to make a train brake inspection, but when it is discovered there are damaged air hose on cars in the cut it is the opinion of the carrier that it is incumbent upon the switch crew to replace the damaged hose so that the traffic may be moved without delay. Any other damage to cars that may occur in the Phillips plant or at other outside industries is repaired by car department forces on the carrier's repair track located in the previously mentioned principal classification yard; in this principal yard a complete inspection is given all cars by the carrier's car inspectors. It is obvious that the replacement of a damaged air hose which would impair the movement of a cut of cars from an outlying industry (where carmen are not employed nor required) to the classification yard where carmen are employed is not the exclusive work of the carmen as contended by representatives of the employes. Further, it is the opinion of the carrier that the replacement of an air hose does not constitute car repairs as contended by the employes.

The carrier respectfully requests that the 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.

Carrier operates a large terminal performing switching service for docks and industries on the north and south shores of the Houston ship canal. Many of the industries are large and use their own switch engine, as well as tractors and trucks, in moving cars in their own plant area. The Phillips Chemical Company is such a plant located approximately eleven miles from carrier's principal classification yard. Due to the curvature of its tracks and the use of tractors and trucks in moving cars, air hose on cars is occasionally damaged. New air hose is made available to yard crews and they are permitted to apply new hose to facilitate the movement of the cars from the industry to the main classification yard. On September 12, 1952, a yard engine crew replaced ruptured air hose on four box cars at the Phillips Chemical plant. The organization contends that this was the work of carmen. The claim is based on this contention.

Contrary to the arguments presented by the carrier, we think the replacing of ruptured air hose with new air hose is repair work within the meaning of Rules 50 and 51, current agreement. It is not incidental to the work of a yard crew within a terminal. It appears to have been a practice for yard crews to do this work, but where it is in violation of an unambiguous agreement it is not a bar to the enforcement of the rule as made although it may operate as an estoppel and prevent the making of claims during the period of acquiescence by the employees. The carrier admits that cars with damaged air hose can be brought to the classification yard on the rear of the cut of cars being moved. The fact that the work might be expedited to some extent by having the yard crew replace ruptured air hose does not warrant a violation of agreement rules. We are obliged to conclude that the carmen's agreement was violated and that the carman entitled to the work should be paid a call under the provisions of Rule 4, current agreement.

#### AWARD

Claim sustained.

#### NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1954.

#### CARRIER MEMBERS' DISSENT TO AWARD NO. 1791 (DOCKET 1704)

The agreement covering the class or craft of Carmen is rooted in the declaration that:

"This agreement governs the rates of pay and working conditions of . . . Carmen, their helpers . . . who perform the work specified in this agreement."

Yet, despite the clarity of this statement, a carman who had not been ". . . called or required to report for service, and reporting . . ." is awarded penalty pay because the Carrier, in accordance with a practice relating to employes of another craft, required some of such employes to perform work not specified in the agreement covering the class or craft of Carmen but which was incidental to and a necessary part of their day's work in moving cars with operative air brakes.

The specific work of replacing defective air hose under the circumstances of this case is not specifically covered by cited rules of the agreement covering the class or craft of Carmen and, subject to the principle that the Carrier can continue to have this work done in the same customary manner as when the Carmen's agreement became effective, it is clear that this agreement did not abrogate the practice recognized in this respect.

The work complained of in the circumstances of this case is not specifically mentioned or named particularly in the Carmen's agreement, therefore is not exclusive to their craft or class. A past practice, clear and obvious as it is and recognized to be a working condition of employes of a Craft other than Carmen, has been dissolved in favor of Carmen without the benefit of rule specifying the work complained of or usage, practice and custom in their favor.

We therefore dissent.

M. E. Somerlott

R. P. Johnson

T. F. Purcell

D. H. Hicks

J. A. Anderson