

Award No. 3652
Docket No. 3232
2-UT(D)-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the Current Agreement it is the duty of Carmen and not Switchmen or Train Crews to connect air steam and signal hose, and inspect and make brake test on out bound Passenger Trains.

2. That accordingly the Carrier be ordered to:

a) Discontinue the assignment of other than Carmen to perform this work.

b) Compensate the seven Carmen who's names are listed below in the amount of a 4-hour call pay at pro rata rate for the following dates:

J. L. Simmons	July	2, 1958
R. L. Jones	July 3 &	4, 1958
B. B. Tucker	July	5, 1958
O. R. Pogue	July 6 &	10, 1958
Clyde Green	July	7, 1958
C. E. Piland	July	8, 1958
J. W. Hubbard, Jr.	July	9, 1958

c) Compensate the above named Claimants for a 4-hour call pay on an alternating basis beginning July 10, 1958, for each and every day thereafter that this rule violation continues to exist.

EMPLOYEES STATEMENT OF FACTS: The Union Terminal Company of Dallas, Texas, is a passenger train Station handling only passenger car equipment for the eight proprietor railroads running in and out of the terminal. On or about July 2, 1958, the schedule of Texas and Pacific Passenger Train No. 3 arrival daily in the Union Terminal was changed

We would particularly direct your Board's attention to the fact that **your Award Nos. 1333, 1554, and 1636 cover cases on this carrier, submitted by the instant petitioner.** We can not understand how petitioner can submit these claims to your Board in good faith in view of those awards.

There are many more awards on the subject. For instance, also see your Award Nos. 664, 682, 826, 1305 and 1823.

Petitioner can not cite any rule in support of the claims, because there is no supporting rule in effect between the parties. You will note in Exhibit No. 2, they cited Rules 15 and 42, which obviously do not support the claims.

The carrier wishes to make it clear that the train involved is a **through train**; a train which passes through Dallas, an intermediate point on its run. The train crew and pilot do nothing which is not incidental to a proper set out of cars at an intermediate point.

The carrier asserts that the claims are entirely without merit, and we request your Board to so decide.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and carriers and the employe or employees 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.

Parties to said dispute were given due notice of hearing thereon.

Texas and Pacific Passenger Train No. 3 originates at Texarkana and terminates at Fort Worth. The train arrives at Union Terminal, Dallas—an intermediate point—at 4:30 A. M. daily, at which time cars are set out and picked up. In connection with this activity yardmen are used to uncouple and couple air, steam and signal hose, while trainmen perform air tests to ascertain if the brakes are functioning properly. There are carmen regularly assigned on the first and second tricks at this location but none on the third trick. Contention is made that the subject hose and air test work is reserved to the carmen's craft under the scope rule (Rule 42) of the controlling Agreement, and that carmen are entitled to be called out to perform this work. The cited rule is quoted in pertinent part in the Employees' submission.

The work in question would be reserved to carmen if performed in connection with their regular duties of inspection and repairs. But where, as here, the hose and air test work is performed incidental to the set out and pick up of cars, it is not reserved to carmen under Rule 42.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3652

Inasmuch as the majority was able to correctly determine from the record that "There are carmen regularly assigned on the first and second tricks at this location but none on the third shift," the majority knowingly omitted making any reference to the important fact that prior to the change in schedule Texas Passenger Train No. 3 arrived at 4:50 P. M., that is during the second shift, and that on that shift the instant work was performed by carmen. In view of the fact that the work in dispute is reserved to carmen on the first and second shift the fallaciousness of the majority's reasoning that the work is incidental to the set out and pick up of cars on the third shift is evident.

Rule 50 of the governing agreement prescribes that "This agreement shall be effective as of March 1, 1938, and shall continue in effect until it is changed in accordance with the provisions of the Railway Labor Act;" therefore upholding the carrier in any unilateral change in working conditions, as the majority has done here, is an attempt to negate the governing agreement.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink