Award No. 3701
Docket No. 3158
2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the controlling agreement Carman Bert Taylor, Bush, Illinois, was deprived of his service rights when other than carmen were required to inspect as well as make repairs to car M.P. 61507 on August 1, 1957, within the Bush Terminal.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate Carman Taylor four (4) hours at the applicable rate for this violation.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, herein referred to as the carrier, maintains a terminal where car repairers and inspection forces were employed for many years. However, on May 6, 1956, the carmen and car inspectors were laid off and the repair track was closed. Some of the work was performed by emergency road men who were stationed at Herrin, Illinois, a point some 6½ miles from Bush, until July 1, 1957 when part of the force was re-established at Bush, namely, one (1) carman, Mr. Bert Taylor, hereinafter referred to as the claimant, and one (1) car helper. Their regular assigned work week was Monday through Friday, rest days Saturday and Sunday, hours 11:00 P.M. to 7:00 A. M.

Train 394 originated at Bush Terminal and in making up this train (394) on August 1, 1957, at approximately 12:15 P. M., Brakeman J. L. Stone was required to remove and replace a ruptured air hose on M.P. 61507 within the Bush Terminal prior to the departure of Train 394. The claimant, who was off duty, but at home and available to perform these repairs as provided for in the controlling agreement and classification of work rule, was not used or called for this job. Therefore, the carrier required Brakeman Stone to make these repairs within the limits of the terminal, even though a carman and helper were employed and available for call. The employes' herewith refer your Honorable Board's attention to a "Time Return and Delay Report of Engine and Train Employes," bearing the signature of Brakeman Stone and dated August 1, 1957; also a letter dated August 16,

ognize the right of the carrier to require train crews to change out bad order air hose just as they recognize the right of the carrier to require train crews to rerail cars, repack hot boxes and the like in connection with their duty of getting their train over the road. However, we have shown that claimant was not headquartered at Bush but headquartered at Herrin and that Bush was within the territory for which claimant was responsible for the inspection of cars. But it makes no difference to the merits of this claim that Carman Taylor was not stationed at Bush since the carrier can properly require train crews to change out a bad order air hose as well as carmen. If the carrier had restricted itself from having trainmen perform such work through collective bargaining with the organization which represents trainmen (which the carrier has not done), the carrier might be in violation of the agreement with the trainmen, but this fact would give no rise to a claim on behalf of carmen. A claim on behalf of carmen must be based on the agreement covering carmen. We have shown that changing out bad order air hose is not included in the classification of work rule for carmen and has not been assigned to carmen exclusively. There is no provision of the agreement covering carmen which has been violated.

We have here a brakeman who on his own initiative expedited the train to which he was assigned by taking ten minutes to change out a defective air hose. Certainly such action should be encouraged so as to result in efficient service to the shipping public. It is not in the best interest of the company, shippers, the public or the employes to shackle the company with the ruling which one individual who was regularly employed and drawing full pay is asking this Board to place on the carrier for four hours pay for ten minutes work.

This claim is not supported by the agreement and is entirely lacking in merit and 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.

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

In making up Train 394 at Bush Terminal on August 1, 1957, a brakeman was required to remove and replace a ruptured air hose on one of the cars. The claimant carman devotes all or substantially all of his working hours at the Bush Terminal. At the time in question he was off duty but was available for call. The employes maintan that the carrier improperly assigned the brakeman to perform work belonging to carmen under Rule 117 of the applicable Agreement, which, among other things, provides that carman's work shall consist of maintaining passenger and freight cars.

The carrier contends that the work was performed outside the maintenance of Equipment Department, that it was incidental to the duties of the train crew, and that the claimant was not headquartered at Bush but at Herrin, Illinois, although Bush was within claimant's working territory.

We think that under the facts and circumstances shown of record in this

case, the replacing of ruptured air hose with new hose was maintenance or repair work within the meaning of Rule 117 and that it was not incidental to the work of a road crew within the terminal. The fact that the work might be expedited by having the road crew replace the ruptured air hose does not justify a violation of the carmen's rules. We conclude that the Carmen's Agreement was violated in this instance and that an affirmative award is required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1961.

DISSENT TO AWARD 3701, DOCKET 3158

The majority has committed grave error in concluding that the Shop Crafts' Agreement was violated when a brakeman changed out a defective air hose on a car moving in the train manned by a crew of which said brakeman was a member.

The record fully sustains the Carrier's position that such work has been historically and traditionally performed by brakemen, and others, under the circumstances present here.

Classification of Work Rule 117 of the Shop Crafts' Agreement, alleged to have been violated, nowhere lists the work here involved, and the record shows that it is not work generally recognized as carmen's work, exclusively. Award No. 5 of Special Board of Adjustment No. 216, quoted on page 11 of Carrier's submission, denied a claim for a switchman who changed out a defective air hose; it there being contended by the Employes that said work was not a duty which could be required of a switchman.

The majority gave recognition to Carrier's contention that the work of changing out a defective air hose was not performed in the Maintenance of Equipment Department, which was never refuted. Accordingly, it could hardly be stated with reason that the work belonged to claimants because of the words of limitation on the front page of the Shop Crafts' Agreement, which reads as follows:

> "It is understood that this Agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Department and in the Reclamation Plant at Palestine, Texas."

See Awards 999, 3171 and 3172, which denied claims for work not performed in the Maintenance of Equipment Department. Thus the very agreement relied upon by the claimants cannot, by its own terms be applicable.

In searching for a basis for a sustaining award, the majority stated, in part, as follows:

> " * * * the replacing of ruptured air hose with new hose

was maintenance or repair work within the meaning of Rule 117 and that it was not incidental to the work of a road crew within the terminal."

This conclusion was reached notwithstanding the work involved is nowhere mentioned in Rule 117, was not performed in the Maintenance of Equipment Department, and was incidental to the work of the road crew because the road crew was responsible for seeing and knowing that the brakes were operative on their train before departing Bush, which was impossible to do without replacing the defective air hose. The record shows that Carrier's cabooses used in road service are supplied with spare air hose for use in the event one is required to replace a defective one, and this practice has existed since the first air brake was placed in service on Carrier's property.

The majority limited its conclusion that the work in question " * * * was not incidental to the work of the road crew **within the terminal."** The word "terminal" is nowhere to be found in any provision of the Shop Crafts' Agreement here applicable. (Emphasis supplied.)

The majority has unwittingly, perhaps, written an addition to the Classification of Work Rule 117 of the Shop Crafts' Agreement on this Carrier and spread the Agreement to work not performed in the Maintenance of Equipment Department, which this Board does not have authority to do as has been uniformly recognized by many of our awards.

For these reasons, we dissent.

H. K. Hagerman
D. H. Hicks
P. R. Humphreys
W. B. Jones
T. F. Strunck