

Award No. 3829
Docket No. 3644
2-CMStP&P-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Doyle when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: (1) That under the applicable agreement, the Carrier has improperly assigned the reading of the Servo Hot Box Detector recordings at Duplainville, Wisconsin to other than carmen.

(2) That accordingly, the Carrier be ordered to pay Car Inspector, J. C. Mickel, Jr. eight (8) hours at the applicable rate of pay for February 2, 1959 and for each day thereafter until said violation is corrected.

EMPLOYES' STATEMENT OF FACTS: On or about December 20, 1958 the carrier had installed a Servo Hot Box Detector between Peewaukee, Wisconsin and Duplainville, Wisconsin. As a part of this electronic device, installed as described above, there is attached to same, by means of wiring, the Servo Recording Unit. This part of the installation was installed at Duplainville, Wisconsin for the observation of the telegrapher when trains pass over the track mechanism for them to observe and report defects as detected by the track mechanism and simultaneously recorded on the recorder.

As the trains pass over this device, the heat from the journal is registered or recorded on a graph tape which reflects whether or not there is evidence of a hot box.

Prior to the installation of the Servo Hot Box Detector, carmen, in connection with the inspection of passenger and freight cars in trains, inspected journal boxes to determine whether or not there were hot boxes or defects which might cause hot boxes.

The recommended manner for in-bound and out-bound inspection is shown on page 16 of the lubrication manual issued by the Association of American Railroads and the inspection procedure is set forth on page 1195 of Car Builders Cyclopedia, 19th Edition.

The claimant is employed by the carrier and holds seniority as an inspector on the first shift from 7:00 A. M. to 3:00 P. M. Tuesday through Saturday, with Sunday and Monday as rest days.

with carmen's work; painting, varnishing, surfacing, decorating, 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 engine houses; 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."

As will be noted, the carmen's classification of work rule does not even touch on the subject of the reading of any tapes. What the carrier has not contracted away remains with it and the carrier has certainly not contracted to carmen any phase of the work here in question and it is most illogical to so contend. Further, the rules applicable to the carmen's craft very clearly contemplate confinement of the work described therein to shops and yards and the performance thereof by hand, so to speak. Duplainville is neither a shop nor yard point. That work of the carmen's craft contemplates performance thereof at a shop or yard point may be seen from Rule 31 (a) of the currently effective agreement between the parties which reads in pertinent part as follows:

"(a) Seniority of employes in each craft and subdivision thereof covered by this agreement shall be confined to the point employed and begins at the time the employe's pay starts at the point and in the craft or subdivision thereof in which employed. The seniority lists will be open to inspection and copy will be furnished the local committee and General Chairman."

Claimant J. C. Mickel, Jr. holds seniority at and is employed at Milwaukee, Wisconsin, where he holds a regular assignment as car inspector. It is the carrier's position that where the parties have agreed, by the provisions of Rule 31 (a), that seniority of employes shall be confined to the point employed, then, in consideration of the fact that the claimant's seniority was confined to a point (Milwaukee) other than the point (Duplainville) where the work in question is being performed, under no circumstances could the claimant's rights extend to Duplainville nor could Rule 31 (a) be so construed as to give to the claimant the right to perform the work at Duplainville.

It goes without saying that the work which is made the subject of claim has never existed before on this property and is in no way included or made reference to in the scope of the carmens schedule agreement. We submit the carmens organization is not privileged by law to obtain such work by board award and further, your Board is without jurisdiction to enlarge the carmens scope rule by board award.

We respectfully submit the instant claim to be without merit under schedule rules and request that it 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 waived right of appearance at hearing thereon.

Does a violation of the basic agreement result from the use of the Servo Hot Box detector and the employment of telegraphers to read the tapes?

It is contended by the employes that carmen are being deprived of work granted to them by Rule 32 and by Carmen's special rule 85. The former rule forbids the performance of mechanics' work by persons other than mechanics or apprentices. Rule 85 provides in part that carmen's work shall consist of * * * maintaining * * * and inspecting all passenger and freight cars.

The objection goes, not to the transmitting of information after detection, but to the reading of the tape by a telegrapher.

Assuming that the rules grant to carmen the exclusive right to inspect, it nevertheless does not follow that the carmen are entitled to read the tapes because this cannot be said to be inspecting. The mechanism does the inspecting if it can be called that. The telegraph operator merely observes the result and transmits it. The further physical inspection occurs later.

To sustain the present claim it would be necessary to hold that the carmen have an exclusive right to read the tape. Since it is outside the area of inspection, we find it necessary to reject this interpretation. See Second Division Awards 3523 (Stone), 3601 (Watrous), and 1480 (Carter).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3829

The reading of the Servo Hot Box Detector recordings is for the purpose of ascertaining whether or not there are any defective journals. The function of inspecting includes not only the detecting of defects but the interpretation of same, exercise of judgment in reference thereto and notification of the proper authorities of the findings. Therefore, the reading of the Servo Hot Box Detector recordings is within the area of inspecting and the majority should have so found.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink