

Award No. 3832

Docket No. 3658

2-SOU-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. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier's instructions forbidding Carmen (Car Inspectors) in the train yard (receiving yard) at Knoxville, Tennessee, to use blue signals is a violation of the current working Agreement.

2. That the Carrier be ordered to rescind such instructions and issue instructions to use blue signals in conformity with the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Southern Railway System, hereinafter referred to as the carrier, operates a train yard at Knoxville, Tennessee, and the carrier requires train yard men (car inspectors) to perform their work duties on cuts of cars and trains without the protection of blue flags by day and blue lights by night.

Trains and cars are moved in and out of this yard at all times, including the moving of trains and cars on which train yard men (car inspectors) are working performing inspection work, including inspecting car journals with Echo-meter. The Echo-meter is an electro-magnetic device, or machine, mounted on a motorized vehicle which moves between tracks in train yard, the vehicle is guided or held on course by its side rails, rubbing or sliding on the ends of the ties. The car inspector stands, or kneels or sits on platform of vehicle, holding cable and contact unit (about the size of a rivet gun) which is firmly pressed against the end of car journals, triggered, and is supposed to indicate or record broken or defective journals. The motorized vehicle is powered by a gasoline motor, has small pneumatic wheels (about 12 inches) and travels about as fast as

9, 1950 to December 1958), carmen and their representatives interpreted Rule 158, insofar as it relates to operations in the receiving yard at Knoxville, in a logical, sensible and reasonable manner. They interpreted it as not having any application to operations in the receiving yard. They thus conceded for more than eight years that carmen employed in the receiving yard at Knoxville, making visual inspections of the type described herein, did not have a contract right to display blue signals and that there was not any violation of the agreement in carrier not permitting car inspectors to display blue signals in performing the type of work required of them in the receiving yard.

Furthermore, the same type of inspections are being made at the other three car retarder yards, i.e., Birmingham, Chattanooga and Atlanta, and no claims or complaints such as here presented have been submitted by carmen or their representatives at the other three locations.

The evidence is therefore conclusive that carmen and their representatives have long since conceded the point here at issue and cannot now be heard to complain.

CONCLUSION

Carrier has shown that:

(a) The effective agreement is not being violated.

(b) Rule 158 of the effective agreement has no application where visual inspections are made and applies only in situations where train-yard men are required, when inspecting or working on cars, to get under, go between, or on cars being inspected or worked on.

(c) The Board is without authority to do what is here demanded in part 2, as it lacks authority to order the carrier to rescind instructions or issue instructions.

(d) The point here at issue has long since been conceded by the employees and their representatives.

Part 1 of the claim should be denied because it is without any basis under the effective agreement. Part 2 should be dismissed because the Board lacks authority to do what is demanded.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This is a companion docket to 3659 but it differs somewhat on its facts. **The same essentials are present, namely, interpretation of Rule 158 and determination as to whether it applies to the testing of car axles by operation of the ultrasonic echometer.** The facts are less obscure here than in 3659.

The cars are shown to be brought into the receiving yard—stretched to eliminate slack between cars and then braked. Thereafter a visual inspection of the cars take place. The lids of journal boxes are lifted either from the vehicle or while walking along. If a defect is found a symbol is stenciled on the car. The usual inspection includes air brake, piston travel, car sides and ends, side bearings, center plates, slack in couplers, etc. Car inspectors are not allowed to go under or between the cars. Specific safety measures are provided if emergency work appears necessary.

The work performed is not restricted to testing by means of the echometer. Manual inspections of various kinds are engaged in and although the Carrier has undoubtedly made a real effort to eliminate all risks we are unable to say that this combined activity here described is not subject to Rule 158. The combined activity is so extensive as to constitute inspecting.

We have examined Award 1764 but believe it distinguishable. The holding there was that the 20 years acquiescence had effectively construed the rule.

Companion Docket 3659 (Award 3833) is different. That is decided on the basis that blue flags and blue lights can be eliminated where the activity is strictly limited to echometer testing. The attempt to enlarge the scope of dispensing with the literal terms of the rule and that as a matter of substance there has not been an elimination of the risk. That being so it follows that the small precautionary measure here demanded is worth the trouble.

If even a possibility of injury exists the relatively insignificant precautionary measure is well worth the expense and effort which it requires.

AWARD

Claim sustained.

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 CARRIER MEMBERS TO AWARD 3832

Findings of the majority in Docket No. 3658 contain numerous statements which are contrary to the evidence of record, clearly indicating that the referee did not understand the duties of the echometer operator and the operation of the receiving yard. Perhaps if he had taken a few minutes to view the movie of the operation at Knoxville, which the carrier attempted to show at the hearing but which he refused to view, he would have avoided some of his errors of fact and of judgment.

In the sixth paragraph the referee said, "Manual inspections of various kinds are engaged in * * *." This statement is contrary to the evidence of record and deals with something not an issue in the dispute.

In the concluding paragraphs the referee said, "* * * there has not been an elimination of the risk. That being so it follows that the small precautionary measure here demanded is worth the trouble. If even a possibility of injury exists the relatively insignificant precautionary measure is well worth the expense and effort which it requires." Here, again, the referee's statements and conclusions are not supported by the evidence of

record. Factually, the Brotherhood argued that "the safety of the employees is ignored," but did not present any evidence to support its contention. As against this, carrier proved that the safety of the employees is not ignored and there are no risks.

Whether the precautionary measure demanded was worth the trouble or expense and effort was not an issue; nor was it a matter over which the Board had jurisdiction. It was not, therefore, a matter for the referee to consider. This being solely a managerial matter, carrier had long since decided it was not worth the price to be paid in unproductive time to the employees and delays to highly competitive freight with resulting loss of revenue.

The positive unrefuted evidence presented by the carrier proved conclusively that Rule 158 of the effective agreement has no application where, as in Sevier receiving yard, Knoxville, Tenn., only visual inspections are made and employees are forbidden to go under or between cars, that it applies only in situations where train-yard men are required, when "inspecting or working on" cars, to get under, or go between, cars being inspected or worked on, that the practice complained of existed for over eight years (from October 9, 1950, to December 1958), thus evidencing the fact that the point at issue had been conceded by the employees and their representatives, and that the Board is without authority to do what is demanded in part 2 of the claim. Despite all the unrefuted evidence presented by the carrier, the award of the majority was, "Claim sustained." Based on the evidence of record, part 1 of the claim should have been denied; part 2 should have been dismissed for want of jurisdiction. The award of the majority is, therefore, erroneous and oppressive. We, therefore, dissent.

P. R. Humphreys

H. K. Hagerman

D. H. Hicks

W. B. Jones

T. F. Strunck

**CONCURRING OPINION OF LABOR MEMBERS TO
AWARD NO. 3832**

We concur with this award but disagree with some of the reasoning leading to the conclusion. Whether the small precautionary measure demanded in the instant case is worth the trouble is beside the point. Disregard of the protection of employees is hardly a managerial matter. It is the duty of the carrier to maintain agreements negotiated in good faith. Rule 158, being clear and unambiguous, leaves the Board no alternative other than to see that "Train or cars while being inspected or worked on by train-yard men will be protected by a blue flag or blue light by night. . . ."

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink