Award No. 3899
Docket No. 3650
2-NYNH&H-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement and the Memorandum of September 25, 1950 when on May 5, 1958 it abolished ten (10) car inspectors (hose couplers) positions and assigned that work to train crews.

2. That accordingly the Carrier be ordered to compensate the claimants affected by these abolishments, each, in the amounts claimed or to be claimed in continuing claims.

EMPLOYES' STATEMENT OF FACTS: For a number of years there have been positions established on this property known as traveling car inspectors (hose couplers). These positions were bulletined for bid to the carmen's craft and the assignments were covered from the carmen's craft.

These men were assigned to a yard switcher and would travel with the switcher during its regular tour of duty coupling and uncoupling air, steam and whistle hoses.

On May 5, 1958 the carrier abolished these positions and the duty of coupling and uncoupling of hoses which had been performed by carmen was assigned to the different yard crews and switcher crews. This dispute has been handled up to and including the highest carrier official designated to handle such disputes, with the result that all have declined to adjust the matter.

The agreement effective September 1, 1949, as it has subsequently been amended, is controlling.

POSITION OF EMPLOYES: The employes contend that when the carrier established the positions of hose couplers and assigned this duty to the

regarding the intent of the parties when the rule was first written. This division has repeatedly held that the practical construction placed on the agreement, as evidenced by the practice in such cases, is controlling. * * * "

Award 3270 (Referee Carey):

" * * * The right of management to assign work in the interests of economy and efficiency, except as restricted by the terms of its agreement has been recognized. * * * The carrier's exercise of a sound business judgment with respect to the most economical and efficient conduct of its operations should not be interfered with in the absence of clear and convincing evidence that its claimed business reasons are without reasonable support."

Once again the Brotherhood of Railway Carmen comes before this Honorable Board with the contention that they enjoy the exclusive right to couple and uncouple air, steam and signal hose. In the face of the consistent denial of such a right in a long line of Awards by your Board the employes attempt to establish this claim on the basis of the memorandum of understanding, dated September 25, 1950. In meeting this contention Carrier has shown that:

1. No provision of the collectively bargained agreement gives carmen the exclusive right to couple and uncouple.

2. The Memorandum of Understanding of September 25, 1950, **does not,** as the employes suggest, grant carmen an exclusive right to couple and uncouple, nor does it act as a barr to abolishing car inspectors' positions.

3. The employes in approximately 40 instances over an eight-year period, and in written rebuttal in Award 3306, have affirmed the application of the memorandum now contested.

4. The claimant car inspectors are not now "employed, and on duty, and * * * available at the immediate locality where the coupling or uncoupling of air, steam or signal hose is necessary."

Consequently, under the clear and unambiguous terms of the 1950 understanding, the claim that car inspectors must be used is without merit.

We respectfully request this Honorable Board to deny this claim in its entirety.

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.

ISSUE: Whether the work of coupling and uncoupling air hoses is under the basic agreement the exclusive work of carmen so as to preclude performance of such duties by others.

The claimants here contend that the duties here in question, although not specifically classified in the basic agreement as carmen's work became theirs by virtue of tradition and custom, a certain memorandum issued in 1950, and a letter of Vice President Doolan. This latter document, they allege, gave recognition to the claimed rights. In order to evaluate the employes position it is necessary to analyze and test their several grounds for maintaining that the coupling and uncoupling work is their prerogative.

First, the memorandum. This document provides in part that "At points where car inspectors are employed and on duty and are available at the immediate locality where the coupling and uncoupling of air, steam or signal hose is necessary, it would be the purpose that car inspectors be used for such work." Exceptions are specifically noted. From the memo it is clear that carmen must be used when they are available and on duty at the locality. This, however falls short of committing the carrier to the use of carmen always and under all circumstances to the exclusion of others so as to prevent the assignment of these duties following the abolishing of carmen jobs at a particular locality and the assignment of these duties to others. The undertakings to use carmen is too qualified to admit of the interpretation urged.

Second, the Doolan letter. In response to a claim resulting from use of ground crews for hose coupling, Doolan declared in a letter dated June 20, 1950 that "In these particular circumstances and based upon the fact that there was an established position, and the duties of that position remained to be performed * * * I think there is justification for this claim."

It is impossible to find any general admission in this letter accepting or approving a general policy recognizing that carmen must always perform the coupling or uncoupling function. The most that can be said of it is that it recognized the merit of the particular claim based upon the circumstances presented.

Third, the evidence indicating a custom or practice. Various exhibits attached to the employes submission and rebuttal are offered to show that historically the work in question has been treated by the carrier as carmen's work. They also prove, according to the employes, that the memorandum (referred to above) has been construed and treated as assigning the coupling and uncoupling function to carmen at least to the extent that established positions can not be abolished. It appears from an examination of these exhibits that the Carrier believed that it was obliged to have carmen perform the coupling function when available to do so, but the allowance of the claims does not evidence more than that.

The awards which have been cited by both of the parties are not helpful. They include Second Division Awards 319, 457, 1554, 1626, 1627 and 1636. They merely recognize that the coupling and uncoupling function is work incident to the other duties of carmen. The claims there involved arose on other properties. Award 3306 was decided on a fact situation more favorable to the employes than the facts here.

We must conclude that the evidence fails to establish that a binding supplemental agreement assigning this work to carmen was ever concluded.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3899

The issue stated by the majority is not the issue in the case. The issue is whether the carrier violated the controlling agreement and the Memorandum of September 25, 1950 when it abolished the car inspectors' positions and assigned the work to train crews.

The findings reflect inaccurate evaluation of the evidence of record. In view of the fact that the Memorandum of Understanding was negotiated in good faith between the Brotherhood Railway Carmen and the carrier there is no basis for the majority's conclusion that "the evidence fails to establish that a binding supplemental agreement assigning this work to carmen was ever concluded." The last paragraph of the memorandum states that "it will be terminated upon thirty (30) days' notice on request to do so by either party signatory thereto." Since this was not done the Memorandum is still in full force and effect and in the situation presented in this docket the work properly belongs to the claimants and a sustaining award should have been rendered as was done in Award 3306.

/s/ **Edward W. Weisner**
Edward W. Weisner

/s/ **C. E. Bagwell**
C. E. Bagwell

/s/ **T. E. Losey**
T. E. Losey

/s/ **E. J. McDermott**
E. J. McDermott

/s/ **James B. Zink**
James B. Zink