Award No. 4166
Docket No. 4152
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

TRANSPORT WORKERS UNION OF AMERICA, RAILROAD DIVISION, A. F. of L. — C. I. O.

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY
and
THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

Claim is herewith presented in behalf of car repairmen on their rest days and/or other available car repairmen for: Eight (8) hours at the time and one half rate for each day car inspectors are used to perform car repairing work in the Gateway Car Shop, Struthers, Ohio. This claim to be retroactive as per Rule 38(f) of the controlling agreement. This is a continuing claim until such time as the violation ceases to exist.

EMPLOYES' STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-156.

At this point there is a common roster for carmen and car inspectors, but the jobs are advertised either carmen or car inspectors and so awarded. This means that if an employe bids a carman's job and he has been awarded this job he works in the car shop and not in the inspection yard. The same happens if the employe is awarded an inspection job, he works in the inspection yard and not the car shop.

At this point as at other points on the property of the carrier there are extra boards for car inspectors, but there are none for car repairmen.

At this point the carrier has taken car inspectors (extra car inspectors) and used them in the car shop. This is in violation of the agreement as there is no extra board for carmen.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie

extent the contract does not expressly limit or restrict management's rights and prerogatives, it is free to exercise fully the usual and customary managerial functions."

An affirmative award in this case would be in direct contradiction to these rulings of the National Railroad Adjustment Board.

CONCLUSION

The carrier's position may be summed up as follows:

1. The claim is vague, indefinite and lacking in specificity.
2. Car inspectors and car repairmen are both classified as carmen and are governed by the same rules of the same agreement.
3. In the Youngstown Seniority District car inspectors and car repairmen are combined on one common seniority roster.
4. The principle at issue herein involves carmen's work to be performed by carmen.
5. The carmen's organization recognizes the practice of using carmen from the extra list on so-called "shop hold-downs."
6. Awards of the Four Divisions of the National Railroad Adjustment Board support carrier's position.

The Carrier respectfully submits that the claim is without merit and therefore 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.

At the Carrier's Gateway Car Shop, Struthers, Ohio, there exists a common seniority roster for Carmen and Car Inspectors. This arrangement permits a qualified Car Repairman to bid on, accept and work a Car Inspector's assignment. The Classification "carmen", embraces the occupations of both Car Inspectors and Car Repairmen.

The record indicates that there is an extra board for Car Inspectors but none for Carmen. The extra board is comprised of Carmen who lack sufficient seniority to hold a regular Car Repairman's or Car Inspector's assignment, and also of Car Repairmen and Car Inspectors who do not wish to hold a regular assignment.

The Organization contends that the Carrier's action in taking extra board Car Inspectors to do Car Repairmen's work is a violation of the Agreement.

However, the Organization failed to cite what specific rule of the Agreement the Carrier violated.

It is true that the Organization mentioned Rule 38(f) of the controlling agreement, but that is strictly a procedural rule which does not become operative or effective until a contractual violation has occurred.

Accordingly, this Board rules that the Organization's claim fails on two counts:

1. The Carrier did not violate any rule of the controlling Agreement;

2. The Claimants cannot readily and easily be identified. In fact, the Board considers the claim improper for determination because it is a scatter gun or a catch-all claim.

The Board also wishes to indicate that the claim in question was poorly and improperly prepared on the property and not in keeping with the relevant provisions of the Railway Labor Act and Circular No. 1.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1963.