Award No. 4191
Docket No. 3824
2-SAL-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement when, on May 29, 1959, at 5 P. M., it placed in service broken flange and dragging equipment detectors with control cabinet being located in Hump Conductor's office and assigned other than carmen to observe and relay information indicated by detector devices at its Hamlet, North Carolina Classification Yard.

2. That the Carrier violated the current agreement when Mr. E. E. Hamer, Terminal Superintendent, issued Bulletin No. 15 under date of May 28, 1959 which created the assignment of other than carmen the control functions and operation of the above.

3. That furloughed Carman G. L. Taylor, R. L. Moser, R. J. McKay and L. K. Bryant are entitled to be paid eight (8) hours each at pro rata rate, five (5) days per week subsequent to May 28, 1959, until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: On January 31, 1955 the carrier opened a new classification yard at Hamlet, North Carolina, at the time this new yard opened, there were car inspectors assigned to the inspection pits around the clock and dragging equipment detector device were placed in operation between these pits and the hump crest. This detector when activated by low or dragging objects on cars would sound off a signal, thus the movement of cars would be brought to a stop on hump track and car inspectors assigned to the pits would come out to make the necessary inspection and repairs, however, these car inspector's positions were abolished on May 22, 1957 but car inspectors assigned in the receiving yard continued to make the inspection of cars when dragging equipment was activated. On Friday, May 29, 1959, at 5:00 P. M., the carrier placed in service, broken flange detectors located just north of hump crest, with control cabinet being located in hump

the organization would have one believe that someone is required to operate and handle the devices and that a carman should be assigned thereto since such device takes the place of a carman. As the record shows, such a theory is fallacious: The device did not replace car inspectors — they continue to perform the regular terminal inspection of cars; no one is required or needed to handle and operate the device — it is automatic except for flipping switch on control panel to reactivate the device after alarm has been sounded.

As stated above, the devices did not replace or displace car inspectors. Such devices are simply safety measures designed to detect defects and conditions not always possible of detection otherwise so as to prevent accidents. Such devices are not unusual in the railroad industry. For instance, inspection of tracks is assigned to maintenance of way forces; however, the railroads periodically have the rail inspected by a self-propelled Sperry car (in charge of Sperry employes) which detects hidden defects in rail and automatically sprays paint thereon; however, maintenance of way employes have not contended they should be assigned in the car to handle the tape upon which the defects found are recorded.

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.

On May 29, 1959, the Carrier put in operation certain electronically operated broken flange detectors at its Classification Yard, Hamlet, North Carolina, for the purpose of detecting broken flanges on or looseness of wheels. A control cabinet was placed in the hump conductor's office. Low or dragging objects on cars or broken wheel flanges are signified by lights appearing on the panel of the control cabinet and by a buzzer. The Yardmaster is then notified so that he can arrange for mechanical inspection, and the detector and alarm system are reset and reactivated. These tasks are performed by employes other than carmen in accordance with Bulletin No. 15, issued by Terminal Superintendent E. E. Hamer on May 28, 1959. However, carmen perform any necessary repairs as well as the terminal inspection of cars arriving at or departing from the Hamlet Yard. It is undisputed that no carmen have been furloughed as a result of the installation of the detectors. But the carmen's Organization submits that the Carrier avoided the employment of additional carmen because of such installation (see: Organization's Rebuttal Brief, p. 4).

The Organization filed the instant grievance in which it contended that the assignment of employes other than carmen to observe and relay the information indicated by the detector devices violated the applicable labor agreement. It also asserted that Bulletin No. 15 is violative of the agreement. It requested 8 hours' pay each at the pro rata rate, 5 days per week, for carmen L. K. Bryant, R. J. McKay, R. L. Moser, and G. L. Taylor until the alleged violations of the agreement have been corrected. The Carrier denied the grievance.

In support of its grievance, the Organization relies on General Rule 28 and Special Rule 120 of the labor agreement which read, as far as pertinent as follows:

> "**General Rule 28**: None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft . . ."
>
> "**Special Rule 120**: Carmen's work shall consist of . . . inspecting all passenger and freight cars . . ."

For the reasons hereinafter stated, we are of the opinion that the above rules do not support the grievance at hand.

1. It has long been recognized that a labor agreement, in the absence of provisions indicating a contrary intent of the parties, does not imply a guarantee on the part of the employer (carrier) to furnish employment to any individual. As stated by the Supreme Court of the United States "no one has a job by reason of (the labor agreement) and no obligation to any individual ordinarily comes into existence from it alone." See: J. I. Case Company v. N.L.R.B., 321 U. S. 332, 335; 64 S. Ct. 576, 579 (1944); see also: Karcz v. Luther Manufacturing Co., 155 N. E. 2d 441, 445 (Mass., 1959). It is also well settled in the law of labor relations that the mere existence of a labor agreement does not imply that the employer may not utilize electronic or other automatic devices for operational functions which would otherwise be performed by human labor, even though existing jobs are eliminated or additional job opportunities are thereby curtailed. See: Award 9313 of the Third Division and cases cited therein.

Applying the above principles to this case, we have reached the following conclusions:

A thorough examination of the labor agreement, and specifically of Rules 28 and 120 thereof, has convinced us that the agreement neither prohibits the Carrier from installing the detectors under consideration nor places a contractual obligation upon the Carrier to hire additional carmen in lieu of such detectors. Hence, the Carrier committed no breach of the agreement when it installed the detectors, even if such installation made the hiring of additional carmen unnecessary.

2. The basic problem here presented is whether the Carrier violated Rules 28 and 120 of the agreement when it assigned the operation of the control cabinet to employes other than carmen. We do not think so. The record shows that whatever additional inspection is done is performed automatically by the detectors. The employes who operate the control cabinet perform no inspection work. All that they possibly do is to relay information indicated by the detector devices in appropriate instances and, at the same time, turn a switch or switches to reset and reactivate the detector and alarm system. We fail to see how these tasks which are entirely separate from and independent of any inspection work and which are only incidental to the employes' other duties can justifiably be regarded as "inspecting . . . passenger and freight cars" within the contemplation of Rule 120. See: Awards 3524 and 3829 of the Second Division and cases cited in the latter. Any other assumption would extend the coverage of Rule 120 far beyond its obvious intent and aim.

Accordingly, we hold that the Carrier did not violate Rules 28 and 120 when it assigned the work here in dispute to employes other than carmen pursuant to Bulletin No. 15.

3. It is correct, as submitted by the Organization, that, under comparable circumstances, we held in our Award 3687 that detector devices similar to the ones here involved were not substitutes for, but adjuncts to inspection work and that the operation of said devices constituted carmen's work. We have carefully re-examined our prior Award but no longer adhere thereto as far as it is at variance with our reasoning and conclusions as outlined hereinbefore.

4. Since we are of the opinion that the instant grievance is without merit for the above stated reasons, it becomes unnecessary to rule on the Carrier's precedural objections as well as on its additional arguments, and we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4191

The first conclusion reached by the majority must be regarded as obiter dictum and as of no consequence since the organization did not contend that the agreement prohibits the Carrier from installing the detectors under consideration nor did it contend that the agreement places a contractual obligation upon the carrier to hire additional carmen in lieu of such detectors. What the organization contended is that since the work performed by the detectors was performed by carmen prior to the installation of the detectors the assignment of other than carmen to operate the detectors is a violation of the governing agreement.

The majority states that "the record shows that whatever additional inspection is done is performed automatically by the detectors," thereby admitting that the detectors do perform inspecting work, thus bringing the operation of these detectors within the intent and aim of Rule 120. Accordingly under the scope of this rule the assignment of the operation of the detectors to other than carmen is a violation of the rule and the majority should have so held. This is another case of attempted circumvention not only of the agreement but the command of the Railway Labor Act.

C. E. Bagwell
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