

Award No. 4209
Docket No. 4095
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood 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 EMPLOYEES: Claim is herewith presented in behalf of car inspector Fox for:

"Eight (8) hours at pro-rata rate for Sept. 27, 1960 account of not being called out to perform recognized carmen's work of coupling air hose, testing airbrakes and oiling cars, such work having been performed by Conductor Joe Jobs." On Sept. 27, 1960 about 1:00 A. M., Conductor Joe Jobs was required to couple hose, test air and oil cars on a draft of cars being moved to the NYC Yards (McGuffey Drag). This was performed at Gateway Yard. This is clearly a violation of our scope and classification of work rules as such work is work which accrues to employes of the Carmen's Craft. This claim should be allowed.

EMPLOYEES' STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-146.

Coupling of hose, making air tests and oiling of cars has always been considered as carmen's work at this point, and not trainmen's work.

That 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 & Eastern Railroad Company, covering the carmen, their helpers and apprentices, (car & locomotive departments), a copy of which is on file with the Board and is by reference hereto made a part of these statement of facts.

POSITION OF EMPLOYEES: That the work mentioned in the dispute is work that has always been done by car inspectors at this point and the same should have been done in this instant case.

CONCLUSION: Carrier asserts that this claim should be denied for any one or all of the following reasons:

1. There is no rule in the current carmen's agreement giving that class of employes the exclusive right to couple air hose, test air brakes and/or close journal box lids.
2. Such work has never been assigned exclusively to any particular class or craft of employes on this property.
3. The issues of trainmen coupling air hose and testing air brakes have been taken to this Division by the employes on previous occasions, in which cases the claims were denied and the position of the carrier upheld, and
4. The organization has failed to produce any evidence to substantiate its position in this case.

Awards of the National Railroad Adjustment Board have been cited by the carrier in support of its position.

Carrier respectfully submits that the claim is completely devoid of merit and should 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.

This controversy concerns a claim that a carman should have been called out to couple air hose, test air brakes and oil cars, work which was allegedly done by a conductor who was a member of a train crew when a draft of cars was being moved from Gateway Yard to "the NYC Yards (McGuffey Drag)". At a later conference, during progress of the claim, it seems to have been admitted that the claim was not correct as to oiling cars, that this was not done by the train crew involved, such crews incidentally not being equipped with the necessary tools or lubrication supplies. Thus, we may confine ourselves to consideration of the claim as to coupling air hose, testing air brakes and closing journal box lids.

It is the position of Carrier that the Carmen's Agreement does not assign to carmen exclusively the tasks of coupling air hose, testing air brakes or closing journal box lids; that Carrier has not contracted away the right to have such work performed as efficiently and economically as possible. Award 2565.

The controlling agreement cited by Claimant is that of May 1, 1948 with revisions to March 1, 1956. Rules 25, "Classification of Work", and 26 "Carmen Helpers" are said to govern. However, as Carrier avers, the rules do not specify nor do they indicate by inference that the work of coupling air hose,

testing air brakes and closing journal box lids belongs exclusively to carmen. Further, claimant makes no convincing showing that Carrier is incorrect in maintaining that none of these functions has ever been assigned exclusively to any one craft or class of employees on this property either by agreement or by past practice.

We do not find in these rules the closing of journal box lids assigned solely to carmen or carmen helpers and it appears unobjectionable for members of a train crew to do this voluntarily as an incident to moving the train in question.

It is pointed out by Carrier that the testing of air brakes prior to moving cars, as in the situation here considered, would customarily consist of a visual examination by the trainmen as to whether the brakes apply and release on the rear car and also to have a member of the crew observe the train as it pulls out of the yard. It has been held that such an examination is merely incidental to the movement of a train of cars and is not work belonging exclusively to carmen. Award 3340. Such examination is said to be almost universally the practice with trainmen everywhere.

The work of coupling air hose and making an air test, when accomplished by trainmen as an incident to movement of cars as here, has been held work not exclusively reserved to carmen. It is to be noted that the award of Referee Cheney, August 1, 1951, was adopted by this carrier and that the train crew here claimed and were allowed the 95c air hose coupling allowance. And see Award 3714, quoting with approval from above mentioned Award 3340; also, Awards 3339 and 3335. As long ago as May, 1940, in Award 457, this Board, without referee, pointed out the distinction between such work, when performed merely as an incident to duties of train service employees in contrast to its performance "in connection with inspection and repairs to cars". (Emphasis ours). And we find this distinction repeated in Award 1626 and emphasized in Award 1627 where it is said:

"We think it is clear that the general rule is that the coupling and uncoupling of air hose in the absence of specific agreement is the exclusive work of carmen (inspectors) when it is performed in connection with and incidental to their regular duties of inspection and repair. It follows that the coupling or uncoupling of air hose, when it is not done in connection with or incidental to a carman's regular duties of inspection and repair is not, in the absence of specific agreement, the exclusive work of carmen."

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1963.

DISSENT OF LABOR MEMBERS TO AWARDS Nos. 4209, 4210

A reading of the Cheney Award and Shipley v. P. & L. E. R.R. Co., will readily reveal that they are inapposite. The pertinent Court cases are Virginian

Ry. Co. v. System Federation No. 40, 57 S. Ct. 592 and Order of R. R. Telegraphers vs. Railway Express Agency, 64 S. Ct. 585.

The awards cited by the majority show a lack of evaluation of Second Division awards. In Award 1372 on the New York Central Railroad, of which the Pittsburgh and Lake Erie Railroad Company and the Lake Erie and Eastern Railroad Company are subsidiaries, the parties there, as here, by settlement reached on the property by those in authority to settle such claims, decided that the nature of the instant work was carmen's work and the majority should have so held here.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

J. B. Zink