Award No. 4210
Docket No. 4096
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:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, 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 three (3) extra board car inspectors who were otherwise eligible to work and did not work on Oct. 4, 1960 for: "Eight (8) hours at pro rata rate for Oct. 4, 1960 due to trainmen being used to couple airhose, test brakes and oil cars on twelve (12) on 2-C track in Gateway Yards." On Oct. 4, 1960 crew of McGuffey Drag (NYC) were used to perform work listed in claim hereinbefore, about 1:00 A. M., Conductor Donnadio and Helpers Gardner and Jannone (engine #5606) did perform the work herein listed. This work was performed on twelve (12) cars. This is clearly work which belongs to carmen and should be performed by them. This claim should be allowed.

EMPLOYES' STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-148.

That closing of box lids, coupling of airhose, and making a terminal air test has always been considered as carmen's work and not trainmen's work.

That a written statement has been received from the carrier's employe, Mr. William Tucciarone, in which he states that he was personally told by one of the trainmen that they did perform the work as stated.

That at this point car inspectors have always closed box lids, coupled airhose and tested the airbrakes and not the trainmen.

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), copy of which is on file

made by road trainmen. It was incidental to the work of the trainmen and it could properly be assigned to them. The work of inspection for the purpose of repair and the making of the repairs was assigned to inspectors at Rose Lake, who either performed it at that point or came to Collinsville to do it. Carrier was acting within the prerogatives of management in handling this work as it did."

For pronouncements similar to the above on the question of air hose coupling and testing air in connection therewith, see Second Division Awards Nos. 32, 667, 682, 833, 918, 1218, 1333 and 1626, 1636, 2253 and numerous others of both First and Second Divisions.

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 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.

4. The organization has failed to support its contention that Rule 25 of the carmen's agreement was violated.

5. The organization has also failed to specifically name the claimants in whose behalf this claim has been filed, and

6. Awards of the National Railroad Adjustment Board support the carrier in the instant case.

Carrier respectfully submits that the claim is completely without 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.

Claim here is for eight hours pay at pro rata rate for three unnamed extra board car inspectors who, it is alleged, were eligible to work but were not called to "couple airhose, test airbrakes and oil cars", 12 in number, on 2-C track in Gateway Yards, October 4, 1960, due to the fact that this work was then done by trainmen who were moving said cars to the McGuffey Street Yard of the New York Central Railroad at Youngstown, Ohio.

It is apparent from a painstaking examination of the record that this case, aside from minor and immaterial variations in the facts, none of which make any fundamental or significant difference in the questions presented to the Board, is practically identical with Award No. 4209 and requires the same disposition.

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