

Award No. 4215

Docket No. 4104

2-IHB-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

INDIANA HARBOR BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement, when on August 20, 1958 they abolished all Carmen's jobs in the LaGrange Yard, Norpaul Seniority District, and improperly transferred their work of coupling air hoses and testing of air brakes to the Switchmen and/or Trainmen.

2. That the Carrier be ordered to restore the work of coupling air hoses and the testing of air brakes to the Carmen's Craft.

3. That furloughed carmen, namely Paul Bruggeman, John Higgins, Sam Roberts and A. Damjanich, be compensated for eight (8) hours pay per day, five days per week, from August 20, 1958 until these jobs are restored.

EMPLOYEES' STATEMENT OF FACTS: September 14, 1946 the carrier had the work of coupling of air hoses and the testing of air brakes transferred from the C.B.&Q. Railroad to the Indiana Harbor Belt Railroad, and the Indiana Harbor Belt Railroad Carmen performed the work from that time until August 20, 1958, when the carrier laid off the carmen and transferred this work to the switchmen and/or trainmen. On February 7, 1946 the following bulletin was posted:

"Norpaul, Illinois
February 7, 1946

TO: ALL CAR DEPT. EMPLOYEES—

The following new positions are open for bid at LaGrange, Illinois, per Rule 18:

One Car Inspector-Repairer, first trick, 7:00 A. M. to 3:30 P. M., including 20 minutes lunch period, assignment 7 days per week.

Railroad Trainmen, and the Brotherhood of Railway Carmen, allocating the performance of the Coupling Function solely to carmen. On the contrary, present rules portray examples of the over-lapping of craft lines, and illustrations of tasks which are common to the crafts of both the Brotherhood of Railway Carmen and the Brotherhood of Railroad Trainmen. It should also be observed that this conclusion is not original with the present referee. The Federal District Court, in the case of Shipley versus Pittsburgh and Lake Erie Railroad Company, 83F, Supp. 722, previously reached an identical conclusion, from which significantly no appeal was taken."

The carrier contends its position with regard to tasks which are common to the crafts of both Brotherhood of Railway Carmen and the Brotherhood of Railroad Trainmen has not been altered by any agreement with the Brotherhood of Railway Carmen. Under the carmen's classification of work Rule 154, which does not mention coupling air hose, the carmen's known duties are listed. Under the clause in carmen's Rule 154, providing that "* * * all other work generally recognized as carmen's work," the carrier contends that it has never, by written agreement, oral agreement, or past practice, recognized the coupling functions and making air tests as being within the exclusive province of the carmen's craft.

CONCLUSION: The carrier has shown:

1. The case should be dismissed due to long delay in progressing it to this Division;
2. Coupling of air hoses and making air tests is not exclusive work of carmen;
3. Carmen's Rule 154 is not violated when trainmen couple air hose and make air test; and
4. Continuance of the carman positions is not justifiable.

The claim in the instant dispute, if not dismissed, should be denied in its entirety for lack of merit.

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.

On August 20, 1958 the Carrier abolished three carmen's jobs in the LaGrange Yard, Norpaul Seniority District and on the same date established the same number of positions at Norpaul, 10 miles distant, in the same Seniority District, and the work of coupling air hoses and testing air brakes at LaGrange was thereafter performed by Switchmen and Trainmen.

It is the Organization's position that the Carmen's work remained at LaGrange and is improperly being performed by Trainmen and Switchmen.

Carrier maintains that there is no Rule of the Carmen's agreement which

gives the work of coupling air hoses and testing air brakes exclusively to Carmen, and that the functions being performed by Trainmen and Switchmen at LaGrange do not deprive Carmen of their work. Carrier points out that it has abolished its interchange inspections at LaGrange and hence there is no longer a need for Carmen at that point.

Carrier also invokes the doctrine of laches as a bar to the instant claim.

The doctrine is inapplicable under the record before this Division.

Numerous awards of this Division have held that the work of coupling air hoses and testing air brakes is exclusively the work of Carmen only when performed as an incident to their regular maintenance and repair duties and inspection incident thereto; the latest being Award No. 4145.

We are not unmindful of the Organization's submission containing instances of Carrier's previous letters and bulletins indicating an exclusive assignment of this work to Carmen, but we hold that the transfer of the functions of Carmen at LaGrange on August 19, 1958 was validly done, and that the Carmen's work went to Norpaul, and consequently the coupling of air hose and testing of air brakes at LaGrange was no longer the exclusive work of Carmen. Accordingly, we must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1963.

DISSENT OF LABOR MEMBERS TO AWARDS 4215 and 4216

The majority in one paragraph of the findings states that "the Carmen's work went to Norpaul" and in another paragraph concedes that when "the Carrier abolished three carmen's jobs in the LaGrange Yard" * * * "the work of coupling air hoses and testing air brakes at LaGrange was thereafter performed by Switchmen and Trainmen." Thus the organization's position that the carmen's work remained at LaGrange is upheld and consequently the majority should have held that the work of coupling air hoses and testing air brakes at LaGrange was still the work of carmen. To hold otherwise as the majority has done constitutes upholding the carrier in making a change in working conditions—which can only be done by agreement between the duly authorized parties to the agreement or in accordance with Section 6 of the Railway Labor Act.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink