

**Award No. 4239
Docket No. 4092
2-P&LE-TWU-'63**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when 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 car inspectors from the extra board of our inspectors who otherwise did not work and were eligible to work on September 7, 1960 on second trick, if none eligible to work, then in behalf of car inspectors from the overtime list of regulars who made known of their desire to work overtime. "Claim for eight (8) hours at overtime regularly assigned car inspectors and/or eight (8) hours at pro-rata rate for extra board car inspectors for September 7, 1960." On Sept. 7, 1960, Conductor Hester and two (2) of his crew were required to couple air hose, test airbrakes on a draft of cars (15) and were also required to perform car inspectors work of treating the journal boxes, including closing of journal box lids. This occurred on No. 3 lead on a draft of cars that were being prepared for movement to the LE&E Railroad. It is submitted that the work performed by the crew on this date is work that is recognized as being exclusively car inspectors work. This claim should be allowed.

EMPLOYES' STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-141.

That car oiling and packing and closing of box lids has always been recognized as carmen's work and not trainmen's work. That testing of air has also been recognized as carmen's work.

That a written statement has been received from the carrier's employees who saw the trainmen perform the work that belongs to the carmen's craft.

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.

The claim is that the conductor and two of his men "were required to couple air hose, test airbrakes on a draft of cars (15) and were also required to perform car inspectors' work of treating the journal boxes, including closing of journal box lids".

During the handling on the property it developed that they did not treat the journal boxes. The carrier denies also that they closed journal box lids, and there is no evidence that they did so. Those matters are therefore eliminated from consideration here.

It is stated by the carrier, and not denied, that the yard foreman and crew moved eighteen cars from the classification yard to the Lake Erie & Eastern Railroad; that twelve of the cars had been worked by a car inspector that morning, and that the foreman and crew did not work the other six, but handled them from the scales, coupling air hose where necessary, doubled them to the twelve inspected cars, pumped up the air, made a visual test to determine that the air brakes applied and released on the last car, and then departed on the train movement.

The coupling of air hose and testing of air are not expressly included in Rule 25, the Classification of Work Rule. The Employes' contention is that they are included in the clause "and all other work generally recognized as carmen's work". However under similar rules and conditions it has been held by this Division, both with and without referees, that such work is not exclusively for carmen. (Awards 457 (without referee), 1627, 3335, 3340, and many others), and it is admitted that trainmen may couple hose and test airbrakes as an incident to train movements, which is what they did in this instance.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 4239, 4240

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