Award No. 4286
Docket No. 3883
2-IHB-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

INDIANA HARBOR BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That the current Agreement was violated when the Carrier removed the Carmen from the Corn Products Company Plant and transferred their work to the Switchmen.

2. That Carmen Messrs. John Liber, C. Santoria, J. DiGangi and Sam Consonza be compensated at the rate of 4 hours at straight time rate for each of the following violations, and such future violations as may occur until the practice is discontinued.

EMPLOYES' STATEMENT OF FACTS: On the following dates the switchmen coupled air hose and gave terminal air tests in the Corn Products Refining Company Argo Yard:

3-28-58	Eng. #8814	Conductor	Marcheshi	30 cars 5:30 A. M.
4- 2-58	Eng. #8874	"	Lonigen	41 cars 3:00 A. M. to 4:30 A. M.
4- 2-58	Eng. #8816	"	Mattingly	50 cars 6:30 A. M.
4- 3-58	Eng. #8814	"	Chiowla	35 cars 5:30 A. M.
4- 4-58	Eng. #8814			45 cars 5:00 A. M. to 6:00 A. M.
4- 5-58	Eng. #8735			33 cars 6:45 A. M.
4- 6-58	Eng. #8822			33 cars 6:00 A. M.
4- 7-58	Eng. #8822			30 cars 4:15 A. M.
4-10-58	Eng. #8822			48 cars 5:30 A. M. to 7:20 A. M.
4-26-58	Eng. #8826	"	Herman	44 cars 11:59 P. M.

There was a continuous violation of the agreement from March 28, 1958 until July 19, 1958, when this work was returned to the carmen.

POSITION OF EMPLOYES: It is submitted that the work of coupling air hose, testing of air brakes has been performed by carmen in the Corn Products Plant for a number of years back. In 1940 the following bulletin was posted:

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, 83 F. Supp. 722, previously reached an identical conclusion, from which significantly no appeal was taken."

The contention of the employes that this work is carmen's work on the basis it has been performed by carmen is of no significance or importance, in view of the agreement rules in effect between the parties and this board has repeatedly held that past practice does not change an agreement rule. The contention of the employes that this is carman's work on the basis that it has been performed by carmen, if sustained, would actually distort the real intent and meaning of the phrase "and all other work generally recognized as carmen's work" or change the language to read "and all other work performed by carmen".

The work performed by the trainmen in the Corn Products Yard was not inspection or repairs to the cars but was work which the First Division and this Division has held as being work incidental to the work of train service employes.

CONCLUSION

The Carrier has demonstrated hereinbefore that —

1. Coupling of air hoses and making air tests is not exclusive work of carmen.

2. Carmen's Rule 154 is not violated when trainmen couple air hose and make air tests.

3. The claim in the instant dispute is wholly without merit and should be denied in its entirety.

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.

The Corn Products Refining Company owns and operates a train yard at Argo, Illinois, which is served by several railroads, including the Carrier. The Carrier's switch engine crew places cars on the receiving tracks of the Corn Products yard. All switching within the plant is performed by a Corn Products locomotive which also places the cars on the outbound tracks. The Carrier's switch engine crew then picks the cars up and brings them to the Carrier's Argo train yard, a distance of about one-half mile, where the usual inspections and necessary repairs are made by the Carrier's carmen.

On certain specified days between March 28, 1958, and July 19, 1958, switchmen belonging to the Carrier's engine crew coupled the air hoses and

made air tests on cars which has been stored at the outbound tracks in the Corn Products yard so that they could be moved to the Carrier's Argo yard.

The Claimants, S. Consonza, J. DiGangi, J. Liber, and C. Santoria, who are employed as carmen at the Carrier's Argo yard filed the instant grievance in which they contended that the Carrier violated the applicable labor agreement when it assigned the above described coupling of air hoses and making of air tests to switchmen. They requested compensation in the amount of four hours each at the pro rata rate for each alleged violation. The Carrier denied the grievance.

We are asked to decide in this case whether the coupling of air hoses and the making of air tests in the above described instances involved work exclusively belonging to the carmen's craft. For the reasons hereinafter stated, we are of the opinion that the answer is in the negative.

1. Substantially the same legal question was submitted to us for adjudication by the Carrier and the Organization in Docket 3862. In that case, the same labor agreement was also involved. We denied the carmen's claim in our Award 4145 primarily on the ground that "in general, in the absence of specific agreement, the work of coupling and uncoupling air hose and testing air has been held exclusively reserved to carmen only when performed as an incident to their regular maintenance and repair duties and inspection incident thereto." We noted that our ruling was in accord with numerous other Awards of this Board as well as with the detailed Award of Referee Geo. Cheney, dated August 1, 1951, and the decision of the U. S. District Court, Western District of Pennsylvania, in the matter of Shipley v. Pittsburgh & L. E. R. Co., 83 F. Supp. 722 (1949). We have carefully re-examined our prior Award but have found nothing in the record which would justify a different ruling. Accordingly, we adhere to said Award. See: Award 3991 of the Second Division.

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

Rule 154 of the labor agreement contains a specific description of various tasks coming under the jurisdiction of the carmen's craft. However, coupling of air hoses or making air tests incidental to car movements is not specifically listed: The Rule also provides that all other work not explicitly enumerated therein but generally recognized as carmen's work belongs to their craft. The record reveals that carmen have coupled air hoses and made air tests at the Corn Products yard. Yet this fact is of no decisive significance unless they have performed such work exclusively. See: Awards 1110 and 4259 of the Second Division. The available evidence does not permit such a finding. On the contrary, the evidence on the record considered as a whole convincingly demonstrates that carmen as well as trainmen have traditionally performed said work. Hence, Rule 154 does not support the instant claim.

2. The Claimants also rely on a bulletin posted by the Carrier on December 20, 1940, in which bids were invited for a job consisting of "inspecting and repairing cars in Argo Yard * * * and Corn Products Refg. Co." The bulletin does not mention coupling of air hoses or making air tests incidental to train movements and we do not construe it as including such work. This conclusion is corroborated by the uncontroverted fact that carmen performed no coupling functions at the Corn Products yard until September, 1943, or for a period of about 2¾ years after the posting of the bulletin.

Furthermore, the Claimants have referred us to several instances in which the Carrier allegedly satisfied claims similar to the one here in dispute. The

record indicates that the factual situations underlying the previous settlements are distinguishable from the one before us. In addition, the Carrier has called our attention to certain instances in which it has denied similar claims. Thus, the available evidence is inconclusive to make a finding to the effect that the parties entered into a specific understanding outside of the labor agreement in which they agreed that the work here in dispute exclusively belongs to carmen.

In summary, we are of the opinion that, on the basis of the facts underlying this case, the Carrier did not violate the labor or any other agreement between it and the Organization.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4286

The majority states "We are asked to decide in this case whether the coupling of air hoses and the making of air tests in the above-described instances involved work exclusively belonging to the carmen's craft." The question asked was whether the work performed in certain described instances on specific dates was wrongfully transferred from carmen to switchmen.

The majority ignores the carrier's admission that the work at Corn Products Company (Argo Yard) was carmen's work and would have been performed by carmen as usual if they had not been doing other work at Argo Yard. The record reveals that in the past when the carrier assigned other than carmen to do this type of work the carrier admitted that it was wrong in doing so and returned the work to the carmen and compensated them for assigning their work to others. The record further shows conclusively that the factual situations underlying previous settlements are not distinguishable from the facts underlying the present case.

Under the circumstances of this case and the available evidence the decision of the majority should have been in the affirmative and the carrier should have been ordered to live up to the previous settlements made in regard to this type of work.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink