Award No. 4388

Docket No. 4243

2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly assigned other than Carmen to inspect cars in its St. Cloud, Minnesota Train Yards on December 19, 1960 and January 16, 1961.

2. That accordingly the Carrier be ordered to additionally compensate Carman Sylvester Weiman four (4) hours for each of the aforesaid dates at the applicable Carmen's rate account the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Co., hereinafter referred to as the carrier, regularly employs carmen at St. Cloud, Minnesota in its facility known as St. Cloud shops. Carman Sylvester Weiman, hereinafter referred to as the claimant, is regularly employed and assigned by carrier as a carman in its St. Cloud shops.

Prior to December 31, 1957, carrier regularly employed carmen at St. Cloud, Minnesota in its facility known as St. Cloud inspection yard and repair track who held seniority on a seniority roster known as St. Cloud inspection yards and repair track forces, which for seniority purposes is separate and apart from the St. Cloud shops. Effective December 31, 1957 carrier furloughed all Carmen working in the St. Cloud inspection yards and repair track holding seniority on the St. Cloud inspection yards and repair track forces' seniority roster.

Since the furlough of the yard forces, carrier maintains a small repair track within the confines of St. Cloud shops to repair cars bad ordered at St. Cloud. On December 19, 1960 and January 16, 1961 carrier's St. Cloud Shop Foreman, Fred Burke and Al Feddema inspected the following freight cars in the St. Cloud train yard; GN 55637, Southern 306569 and UTLX 2712, and bad ordered them for such defects as airbrakes, repack and brake beam missing.

This dispute has been handled with all officers of the carrier designated

after May 4, 1958, since no Mechanics were employed there, the application of the rule, whereby foremen may engage in Mechanic's duties has been broadened beyond rational concept.

"While there is some conflict in the evidence with respect to the nature and extent of the work performed at Jackson Street Roundhouse after May 4, 1958, we are convinced that the position of the carrier is fully sustained. That since May 4, 1958 the general Mechanical Maintenance and repairs work, which was formerly performed by the furloughed employes at Jackson Street Roundhouse, is being performed by the appropriate class and craft at the Carrier's Minneapolis Junction Roundhouse. Thus no agreement rule or rules between carrier and the Machinists organization were violated."

Similar claims on other carriers have been denied by this Board in **Awards 2643, 2916, 2959 and 3304,** and the right of foremen to perform mechanics' work where no mechanics were employed was upheld.

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. It is the fundamental right of the carrier to assign the work in question in whatever manner is necessary or desirable, unless the power to make such decisions has been limited by law or by some clear and unmistakable language in a collective bargaining agreement.

2. The organization bears the burden of proving that it has secured the exclusive right to inspect and bad order freight cars at the St. Cloud train yard by clear and unambiguous contractual language.

3. The only contractual language cited by the organization to support its demands is contained in rules 42(a) and 83.

4. Rule 83 merely defines carman's work and does not specify who may perform it.

5. Rule 42(b) allows foremen to perform work in the proper exercise of their supervisory duties, and this Board has recognized in previous awards that inspection of equipment is such work.

6. Even if the work involved in this case were ordinarily reserved exclusively to carman mechanics, rule 42(a) specifically allows a working foreman to perform such work at a point such as St. Cloud train yard where no mechanics are presently employed, in accordance with **Awards 3270 and 3711** on this property, and others.

7. Even if this Board found a violation of some rule or agreement in this case, there is no basis for the penalty demanded by the Organization.

For the foregoing reasons, the carrier respectfully requests that the claims of the employes 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 Organization contends that on December 19, 1960 and on January 16, 1961 the Carrier's foremen inspected cars in its St. Cloud Yards. In support of its contention the organization submitted 3 photo copies of Bad Order Cards. With the exception of a difference in the dates and number of Bad Order Cards attached, the pertinent facts in the instant case are identical to those found in Award 4386.

The parties agree that Award 4386 is also controlling here, therefore for the reasons stated therein we find that the claim herein is without merit and should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4388

The majority admits the essential fact that on December 31, 1957 the carrier closed its St. Cloud Inspection Yards and Repair Track and furloughed all carmen but chooses to ignore the equally essential fact that the work (inspecting) previously performed by carmen was performed by other than carmen on December 19, 1960 and January 16, 1961.

Further, the majority in using the Carrier's Code of Operating Rules in a vain attempt to support their erroneous findings, overlooks the fact that the collective bargaining agreement between the parties to a dispute takes precedence over the carrier's unilateral rules. Rule 96 prescribes that "Except as provided for under the special rules of each craft, the General Rules shall govern in all cases. No interpretation shall be placed upon these rules unless agreed to by Management and General Committee."

As to the stated belief of the majority that "due to the Claimant's never having been employed at the Carrier's St. Cloud Inspection Yards and Repair Track that his seniority rights have not been damaged . . . consequently his claim could be denied on the basis that, as to him, the contention of the Organization is moot," the answer is that the violation of the agreement deprived a carman of the work involved and there is no defense that permits such a contract violation. The claim on behalf of any particular individual or individuals is only incident thereto. In other Awards the Board has refused to recognize the defense that the wrong employe holding seniority under the violated agreement is making the claim. The carrier should have been required to comply with the provisions of the governing agreement.

C. E. Bagwell
T. E. Losey
E. J. McDermott
R. E. Stenzinger
James B. Zink