

Award No. 4397
Docket No. 4219
2-GM&O-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 29, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**GULF, MOBILE and OHIO RAILROAD COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier has improperly assigned Trainmasters Cooper and Keller to couple air hose preparatory to inspection and repairs; inspect, repair and maintain freight cars at Union, Mississippi.

2. That accordingly the carrier be ordered to compensate furloughed Carmen as follows:

(a) Eight hours at the straight time rate for each day, Monday through Friday, to Carmen E. Poole and C. Campbell beginning April 10, 1961 and continuing until Carmen are assigned to perform this work.

(b) Eight hours at the time and one-half rate for each Saturday to Carmen Poole and Campbell beginning April 10, 1961 and continuing until Carmen are assigned to perform this work.

(c) In the event either or both of the above Claimants are recalled to service for this Carrier at some other point, the senior furloughed Carmen on the Meridian, Mississippi seniority roster are to become the Claimants.

EMPLOYES' STATEMENT OF FACTS: At Union, Mississippi, the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, makes up and dispatches one train each to Laurel, Miss., Meridian, Miss., and Louisville, Miss., each day Monday through Saturday. One train is made up at Union and dispatched to Jackson, Miss., each Monday, Wednesday and Friday. The distance from Union to each destination is as follows: To Jackson, 74 miles; to Louisville, approximately 55 miles; to Meridian, 32 miles; to Laurel, 70 miles.

and what was required here, is to see if all the brake shoes have set. This is not an inspection, but merely a routine safety precaution, incidental to coupling hose. The fact that carmen perform similar duties in carrying out a detailed inspection, does not make the services required here exclusively carman work."

The above awards recognize the necessity, from practical railroad operation, for other than carmen to comply with the Law applicable to brake inspections. Such inspections are performed at the large preponderance of locations where carmen are not employed, such as Union, Mississippi. It would be beyond all reason to require that carmen have the exclusive right to perform such inspections. Such a requirement could only result in excessive and unnecessary delays to trains or the employment of many additional carmen whose sole duty would be to perform the brake inspection and thus be employed only a very small part of their time.

The qualifications, skill and experience of a carman are in no way necessary to perform such inspections. To give carmen such an exclusive right would be a waste of manpower and revenue and contribute nothing to the safety, efficiency and economy of railroad transportation. There is no requirement by contract, practice or practical railroad operations, that carmen exclusively perform such duties, therefore, this claim 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 Carrier has had the same type of operation in effect at Union, Mississippi for over sixty years and never has a carmen been permanently assigned there. The employes claimed that the Carrier has improperly assigned Trainmasters to couple air hose preparatory to inspection and repairs; inspect, repair and maintain freight cars at Union. Clearly the Organization has the burden of proving its claim. In the instant case the evidence submitted fails to show that freight cars were repaired and maintained by other than carmen. There is evidence that trainmen coupled air hoses preliminary to conducting air test, however, this division and the First Division have previously decided that such work is not exclusively the work of carmen unless there is a specific agreement between the parties. See Awards No. 4239, 3340, 1766. It is evident from the past practices and the current agreement that no specific agreement exists which would grant to carmen the exclusive right to couple air hose and conduct the air test. Award No. 3920, between the same parties, likewise found that no specific agreement existed which granted to carmen the exclusive right to inspect trains. The claim 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 4397

The majority's statement that "It is evident from the past practices and the current agreement that no specific agreement exists which would grant to carmen the exclusive right to couple air hose and conduct the air test" is not in accord with the facts. Past practices do not take precedence over an agreement and do not estop enforcement of an agreement. Practice cannot be considered as an agreed interpretation of a rule. Special Rule 502, giving the classification of work for carmen, specifies "* * * inspecting of * * * freight cars, wood or steel." There is no exception in the rule which would permit other than carmen to perform this work and the present claim should have been sustained.

T. E. Losey

C. E. Bagwell

E. J. McDermott

R. E. Stenzinger

James B. Zink