

Award No. 4403
Docket No. 4246
2-CMStP-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. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier, on the morning of March 20, 1961 augmented the Milwaukee Terminal force of the Chicago, Milwaukee, St. Paul & Pacific Railroad at Milwaukee, Wisconsin, to the detriment of Carman A. P. Waldera, in a manner contrary to the terms of the Agreement.

2. That accordingly, the Carrier be ordered to additionally compensate Carman A. P. Waldera in the amount of eight (8) hours at straight time rate of pay for each of the dates, starting March 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, and April 3, 4, 5, 6 and 7, 1961, and for all other time any of the work is performed by others than the Claimant of this Milwaukee Terminal or the Davies Yard seniority roster.

EMPLOYES' STATEMENT OF FACTS: Carman A. P. Waldera, herein after referred to as the claimant, holds a regular assignment with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, at Milwaukee, Wisconsin. The claimant holds seniority at the Davies yard seniority roster as of September 2, 1942, and is listed on the 1961 roster. He has an assignment as car inspector, Monday through Friday, with rest days Saturday and Sunday and a starting time of 7:00 A. M. to 3:30 P. M. On the morning of March 20, 1961 the Milwaukee terminal supervision of the Davies yard rip track were aware of a vacancy to take place because of Carman Clement Kabacinski, who was titled as a "Loading Inspector" to start his vacation. Mr. C. Kabacinski and Waldera both are listed on the Davies yard seniority roster, and as a fact, Mr. Waldera has been filling the vacancy whenever Mr. Kabacinski was absent for many years, and for the past 7 years it is known he filled the vacancy. On March 20, 1961 the carrier deemed it necessary to augment the force by calling an additional employe from the freight car department seniority roster, which is separate and distinct from the Davies yard seniority roster, rather than to

roster at Davies Yard, at Milwaukee, Wisconsin, there would be no dispute, * * *

In other words, the organization is not concerned with seniority, seniority rosters, etc., but instead they wanted one man and one man only, viz. Claimant Waldera, appointed to the vacation vacancy on the loading inspector position regardless of seniority, etc., or, in other words, they wanted the carrier to "appoint" Claimant Waldera (because he was allegedly "schooled for the position") even though by the claim which they have presented they are alleging the loading inspector position is not a totally excepted position and, therefore, the carrier does not have the right of "appointment". To say that the organization is inconsistent would certainly not be an understatement.

By the claim which they have presented the carmens' organization is attempting to enlarge upon their scope rule through the medium of a Board Award and in this regard the carrier submits that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

Once again the carrier should like to point out the significant fact that at no time during the handling of the instant dispute on the property did the organization refer to or cite any schedule rules or agreement in support of their contentions and claim.

The carrier submits that the loading inspector position with which we are here concerned is not now, and never has been in a position within the scope and application of the carmens' agreement or any other agreement and in view thereof the instant claim in behalf of Employee Waldera is wholly without foundation and merit and we respectfully request that the claim 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 waived right of appearance at hearing thereon.

The claimant herein, Carman A. P. Waldera, is regularly employed as a Car Inspector at the Carrier's Davies Yard, Milwaukee, Wisconsin. For six years prior to 1961 claimant had served as vacation replacement for Loading Inspector Kabacinski; however from March 20 to April 7, 1961 the Carrier did not assign claimant as the vacation replacement but instead used Carman R. Fendrick, who was employed in the Freight Car Department and on its seniority list.

The Organization asserts that the Carrier augmented its Milwaukee Terminal force to the detriment of Carman Waldera in a manner contrary to the terms of the Agreement and requests eight hours at the pro rata rate of pay for each of the working days of Loading Inspector Kabacinski's vacation and for all other time any of the work is performed by others than the claimant of this Milwaukee Terminal or the Davies Yard seniority roster. The Organization relies on Rule 31(a) and (c) of the current agreement to support

its position, however, the Carrier objects to this because no specific Rule violation was cited by the organization to the Carrier in their discussions on the property. For reasons which will be given below it is not necessary that we determine if this objection by the Carrier has merit or not.

Before going further into the assertions and defenses of the parties we must first determine if the position of Loading Inspector is covered by the current agreement between the parties. The carrier emphatically denies that the position is covered by the agreement and further states that the position has been in existence for over 25 years, always at a monthly rate of pay, and previously the Organization has not claimed that the position was subject to the agreement. The Organization does not deny that the conditions stated by the carrier existed.

The Organization has not offered convincing proof that the Loading Inspector position was covered by the Agreement therefore based on the evidence submitted we must find that it is excepted from the agreement as claimed by the Carrier. By making this finding it is obvious that the claim must be denied and thereby there is no necessity for discussing the other points raised by the parties.

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.