Award No. 4472
Docket No. 4016
2-CRI&P-CM-'64

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. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly assigned other than a Carman to make repairs to P.R.R. Car 28307 consisting of inspecting, removing and applying air hose on August 19, 1960.

2. That accordingly the Carrier be ordered to additionally compensate Carman R. J. Findley in the amount of 2 hours and 40 minutes at the applicable rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, maintains a car shop at Oklahoma City, Okla.

One shift of car repairers is employed 8:00 A. M. to 12:00 Noon, and 12:30 P. M. to 4:30 P. M., five days per week, and three shifts of car inspectors around the clock. Car repairers and inspectors use a company truck as transportation to and from different switching yards and industries in the terminal to perform carmen's work on cars and trains.

On August 19, 1960, Footboard Yardmaster C. W. Grigsby made repairs consisting of inspecting, removing and applying air hose on P.R.R. car 28307. C. W. Grigsby was furnished with the necessary tools and material to make the repair to the aforesaid car. Carmen were on duty at the time this repair was made by Mr. Grigsby and no carmen were called to do this work.

Prior claims involving this identical violation occurring at Oklahoma City, Oklahoma, have been paid by this carrier.

This dispute has been handled with all carrier officers authorized to handle disputes, including the highest designated officer, with the result that he, too, declined to adjust it.

repairing, removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxy-acetylene, thermit and electric welding on work generally recognized as carman's work; and all other work generally recognized as carman's work."

Examination of the rule will show that there is nothing contained therein which specifically refers to the replacing of air hoses on cars. However, the employes have stated, in handling the case on the property, that the replacing of air hoses is maintaining cars, and, therefore, work reserved exclusively to the carmen's craft.

The replacing of air hoses has never been recognized as falling in the category of "maintaining cars" nor has this work ever been recognized as belonging exclusively to the carmen's craft, either by rule or by practice. The breaking of air hoses on railroad cars is a common occurrence and yard men have for many, many years performed such work on cars in yards, where hoses are carried on our cabooses and engines.

When an air hose is broken, members of the crew secure replacement air hoses and replace same.

While it is a fact that carmen in a number of instances have been used to replace air hoses, however, yardmen have also replaced air hoses on cars which they were handling.

It cannot, therefore, be said that the replacing of air hoses is work generally recognized as carmen's work. To the contrary, as previously stated, this has not been recognized as belonging exclusively to any class or craft of employes.

The work performed by the yard men in the instant case was in connection with his work on train and as an incidental part of his duties, and inasmuch as air hoses have been so replaced by yard men for many years, we respectfully request your honorable board to deny claim of the employes.

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 Carrier maintains a car shop at Oklahoma City, Oklahoma. Carmen employed there are transported by a company truck to and from different switching yards to perform carmen's work on cars and trains. On August 19, 1960, footboard foreman C. W. Grigsby, who is not covered by the labor agreement between the Carrier and the carmen's organization, removed a broken air hose from car P.R.R. 28307 and applied a new one at an outlying yard (West Yard).

The claimant, Carman R. J. Findley, was employed as a carman at the Oklahoma car shop at the time here relevant. He filed the instant grievance in which he contended that the Carrier improperly assigned the above described work to an employe other than a carman. He requested compensation in the amount of two hours and forty minutes at the pro rata rate. The Carrier denied the grievance.

1. In support of his claim, the claimant relies on Rule 110 of the applicable labor agreement which reads, as far as pertinent, as follows:

> "Carmen's work shall consist of . . . **maintaining** . . . all passenger and freight cars, both wood and steel . . . pipe and inspection work in connection with air brake equipment on freight cars . . . joint car inspectors, car inspectors, safety appliance and train car **repairers** . . ." (Emphasis ours.)

The basic disagreement between the parties centers around the question whether the work performed by Grigsby constituted maintenance or repair work within the contemplation of Rule 110. The terms "maintaining" or "repairers" are not defined in the labor agreement. They must, therefore, be interpreted and applied in the light of the meaning ordinarily ascribed to them in the parlance of labor relations. The term "maintaining" usually refers to keeping in due operation or in a state of efficiency. The terms "repairing" or "repairer" normally connote the performance of work for the purpose of restoring to, or putting back in, good condition after damage. See Award 4065 of the Second Division.

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

The removal of the broken air hose and the appliance of a new one by Grigsby involved both keeping car 28307 in due operation and restoring it to good condition after the air hose was broken. It follows that such work was carmen's work within the purview of Rule 110 and thus belonged exclusively to the carmen's craft. See Awards 1791 and 3701 of the Second Division.

Hence, the assignment of the work to an employe other than a carman violated Rule 110. The fact that the work was performed at an outlying yard is immaterial because carmen were available at the Oklahoma car shop who could have been transported to the yard by the Carrier's truck.

2. In further defense of its denial of the instant claim, the Carrier contends that yard men have, for many years, performed work of the nature under consideration in yards where hoses are carried on the cabooses and engines, as was here the case. In doing so, the Carrier relies on past practice. The claimant had denied the existence of such a practice. Our attention has not been called by the Carrier to a representative number of specific instances from which we could reasonably conclude the existence of a long-continued and consistent practice well-known to and generally accepted by

all interested parties. To demonstrate the existence of a binding rule to govern the rights of the parties, past practice must more adequately exhibit mutual understanding than the record here reveals. See Awards 4016, 4097, 4100, 4193, 4265, and 4335 of the Second Division.

3. The law of labor relations is well settled that a party to a labor agreement which has been found guilty of a violation of the terms thereof is generally subject to an appropriate penalty. See Awards 4312 and 4317 of the Second Division and cases cited therein. Yet this is not a hard and fast rule permitting of no exceptions. See Awards 4200 and 4289 of the Second Division and cases cited therein. In the instant case, we are satisfied that the Carrier's action was caused by a misinterpretation or misunderstanding of Rule 110 rather than by an intentional disregard therefore. Under these circumstances, we disallow the claim for compensation without prejudice to other or future claims of the same nature.

AWARD

Claim 1 sustained.

Claim 2 disposed of in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.