Award No. 4566
Docket No. 4309
2-C&O-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

THE CHESAPEAKE & OHIO RAILWAY COMPANY (Southern Region and Hocking Division)

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated, particularly Rules 154 and 32, May 30, 1961, when other than carmen performed carmen's work. Locomotive Engineer Ray Whaley coupled air hose on cars on Track #2 Fitzpatrick Yard, Russell Terminal, Russell, Kentucky, C&O Railway Company.

2. That accordingly, the Chesapeake and Ohio Railway Company be ordered to compensate Carman R. V. Crum for four (4) hours, May 30, 1961, at the freight carmen applicable time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: R. V. Crum, hereinafter referred to as the claimant, is employed at Russell Terminal, Russell, Ky. by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier. On May 30, 1961, train Northern #95 Westbound Diesel Unit 6251 was ordered for 8:30 A. M., Ray Whaley, engineer, to be dispatched, from Russell Terminal. Cars for said Train No. 95 were assembled on Tracks No 2, 3, and 4, Fitzpatrick Yard. Regularly assigned carmen G. C. Watkins, Harry Trent and Jack Brown were regularly assigned in Fitzpatrick yard with duties of inspection of cars and work trains to be dispatched from the Fitzpatrick yard. Such duties consist of coupling of air hose and inspection of cars and making car to car air brake inspection test on train to be dispatched. In most cases, particularly this instant case, when trains are made up to be dispatched, the cars are assembled on more than one track and in this instant case the cars for Northern #95 were assembled on tracks 2, 3 and 4. When the cars are assembled on separate tracks, the carmen regularly assigned to work the air on the trains, applies the air from a yard air plant and couples air hose, and after the air is charged to the required amount, applies the brakes from the yard air plant, and walks the air brakes and inspects each car to determine that brake on each car set and release and that each car has the proper air brake piston travel length. After the cars are worked by the

time. Under no circumstances would an additional employe have been called from the overtime board for such service.

The employes on duty who were already working the train could have made the two hose couplings in question with little additional effort, and would have done so had the coupling not been made by the engineer. The voluntary service performed by the locomotive engineer did not deprive any employe of the carman craft of any earnings to which entitled.

The carrier has shown:

(1) The work involved in this claim has never been recognized as belonging exclusively to carmen, either by agreement rules or practice.

(2) The coupling of the air hose was performed by the locomotive engineer of his own volition without authorization, knowledge or instructions of the carrier.

(3) No employe of the carman craft was deprived of any earnings to which entitled.

Carrier submits that the claim of the employes is not supported by the agreement rules 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 were given due notice of hearing thereon.

On May 30, 1961, cars for train No. 95 were assembled on tracks 2, 3 and 4 of Carrier's Fitzpatrick Yard, Russell, Ky.

Carmen were assigned to make the necessary inspection and air tests on these cars. While the Carmen were so engaged on tracks 3 and 4, the locomotive was coupled to the cars on track 2, and the engineer proceeded to couple the air hose between the first car and the locomotive and between the third and fourth cars.

We find that this was Carmen's work, and was performed by the engineer in violation of the controlling agreement.

This dispute is distinguishable from Award 4565 in that the work here assigned was a mechanical inspection belonging to the Carmen.

Carrier maintains however, that since the engineer acted on his own initiative and without Carrier's direction and authority, it cannot be held to have violated the controlling agreement.

Nowhere in this record is it disclosed that Carrier directed the engineer to perform this work; nor are circumstances disclosed which show that the

Carrier was aware or should have been aware of the engineer's actions in coupling the air hose. However, as we said in our Award 4217:

> "* * *. We do not feel that there was any intent by the Carrier to deprive Carmen of this work although it would appear that a proper policing of the controlling agreement by all concerned would do much to avoid this type of occurrence."

There was a violation of the Carmen's agreement, but we assess no monetary award because of the circumstances surrounding the occurrence.

AWARD

Claim adjusted in accordance with our findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.