

Award No. 4589

Docket No. 4414

2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly 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 September 2 and 22, 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 September 2 and 22, 1961 carrier's St. Cloud shop foremen Roman Blissenback and Hubert Beckers inspected freight cars in the St. Cloud train yard, bad ordering cars GN 67089, GN 76062 and GN 47615 for such defects as hopper doors and truck bolster.

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

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 employees 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 employees 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 employees involved in this dis-

pute 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.

At St. Cloud, Minnesota, the Carrier operated two facilities—a Car Shop located in a suburb of that city and a Train Inspection Yard and Repair Track located near that city's business district. Separate seniority rosters were maintained at each facility.

On December 31, 1957, all Carmen working at the Train Yard were furloughed and all repair work formerly performed at that facility was transferred to the Car Shop. Only four laborers,—who cleaned cars at the train yard and worked under the supervision of Assistant Car Foreman Fred Burk—remained.

On September 2 and 22, 1961, St. Cloud Car Shop Foreman Roman Blissenback and Hubert Beckers reportedly inspected freight cars at the Train Yard and "bad ordered" three cars.

According to the Organization, inspecting all freight cars is Carmen's work and the Carrier's action violated Rules 83 and 42(a) of the controlling Labor Agreement.

The Carrier contends that Rule 83 does not grant to the Carmen's craft the exclusive right to inspect and bad order freight cars, but merely defines Carmen's work without specifying who may perform it. The Carrier further contends that all "the work was performed in the St. Cloud train yard, a separate seniority point for car department employes" and a point where no carmen have been employed since January 1, 1958.

The pertinent parts of the principal rules involved are as follows:

"Rule 42(a). Assignment of Work.

"None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, except Foremen at points where no mechanics are employed."

"Rule 83. Classification of Work.

"Carmen's work shall consist of building, maintaining, dismantling . . . painting, upholstering and inspecting all passenger freight cars. . . ."

If Carmen had been employed at the Train Yard on September 2 and 22, 1961, we would have to agree that the work of inspecting freight cars belonged to them. However, the record indicates that no Carmen have been employed at the Train Yard since December 31, 1957. Inasmuch as Rule 42(a) specifically provides that Foremen are permitted to do mechanics' work at points where no mechanics are employed, the Carrier cannot, in the instant case, be charged with a violation of the controlling Labor Agreement. (Emphasis ours.)

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1964.