

Award No. 4696

Docket No. 4494

2-GN-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff 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 March 2, 6, 12, 23, April 2 & 9, 1962.

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 carman 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 March 2, 6, 12, 23, April 2 & 9, 1962 Carrier's St. Cloud Shop Foremen A. Feddema, R. Blissenback and L. J. Rau inspected freight cars in the St. Cloud train yard, bad ordering cars GATX 69446, GN 44973, GN 39296, SLSF 32143, GATX 54931, GN 75534 and CB&Q 32095 for such defects as coupler carrier iron missing, broken sill step, cut journals, brake beam, bolster broken, no center pin, running boards and sill step missing.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier,

That although the carrier under rule 42(a) was authorized to assign foremen to do Mechanic's work at Jackson Street Roundhouse, after 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 employes 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 employes 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 Organization alleges that seven freight cars were inspected in the St. Cloud train yard on six specified dates between March 2 and April 9, 1962. The cars were bad ordered for visible defects. The gravamen of the instant grievance is that the Carrier improperly assigned other than Carmen to inspect cars in its St. Cloud, Minnesota Train yards.

The essence of the Organization's position appears to be identical with the situation set forth in Second Division Award No. 4386. Under a strongly analogous state of facts the Organization relies on the following provisions of the Agreement between the parties as being decisive in its favor.

"Rule 83: Carmen's work shall consist of building, maintaining, dismantling, * * * painting, upholstering and inspecting all passenger and freight cars * * *."

Rule 42(a) which states: "None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of such craft, except foremen at points where no mechanics are employed."

Rule 2(a) which provides: "Seniority of employes covered by this Agreement in each craft shall be confined to the point at which employed. It is agreed that Superior, Jackson St., Dale St., St. Cloud, Great Falls and Hilliard Shops, each under its own Supt. of Shops, will each constitute a seniority point under this rule. It is further agreed that Superior and Allouez Roundhouses will jointly constitute a single seniority point under this rule for other than Carmen."

Award 4386 states as follows:

"The Carrier denies that an Assistant Foreman is performing Carmen's work and points to Rule 42(a), quoted above; to Rule 42(b) which says, 'This rule does not prohibit Foremen in the exercises of their duties to perform work'; and to its Consolidated Code of Operating Rules #713, 713(A), 713(B), 713(C) which require all employes to inspect trains at every opportunity and to report defects immediately; to support its position. The evidence before us requires a finding that the Assistant Foreman could make any type of an inspection at the St. Cloud Inspection Yard and Repair Track because no carmen were employed at that point, per Rule 42(a) and Awards No. 3270 and 3711 between the same parties as are before us; however the facts presented do not disclose that the Car Foreman or anyone else did more inspecting than would be allowed to him under Rule 42(b) and the practice enumerated in the quoted section of the Carrier's Code of Operating Rules."

To the same effect see Second Division Awards 4387, 4388, 4389, 4539, 4589

and 4590. We see no reason to depart from the well reasoned Awards cited above.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1965.

DISSENT OF LABOR MEMBERS TO AWARD 4696

No mechanics were employed at St. Cloud but neither was a foreman employed there. Under Rule 83(a) inspecting freight cars is carmen's work and Rule 42(a) provides that "None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of such craft, except foremen at points where no mechanics are employed."

Giving sanction to a foreman performing mechanics' work, as the majority has done in the instant awards, defeats the purpose and intent of the agreement rules. To the same effect see Second Division Award No. 1761.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink