Award No. 4936
Docket No. 4817
2-NYNH&H-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the terms of the current agreement, Rule 107, the New York, New Haven & Hartford Railroad Company deprived Car Inspectors C. Zebrowski and R. Kutzer of their rightful earnings on Friday, July 26, 1963.

2. That accordingly, the New York, New Haven & Hartford Railroad Company be ordered to compensate Car Inspectors C. Zebrowski and R. Kutzer, each, in the amount of eight (8) hours at the time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: The New York, New Haven & Hartford Railroad Company, hereinafter referred to as the carrier, operates a car yard facility at Bridgeport, Connecticut, within which is an automobile loading platform, East Bridgeport Yard, Track 1.

C. Zebrowski and R. Kutzer, hereinafter referred to as the claimants, are employed, by the carrier, at this facility as car inspectors with the following hours and rest days:

C. Zebrowski — 7:00 A. M. to 3:00 P. M. – Thurs. & Fri. Rest days
E. Kutzer — 11:00 P. M. to 7:00 A. M. – Fri. & Sat. Rest days

On Friday, July 26, 1963, two (2) employes of the Metropolitan Body Company, Bridgeport, Connecticut, came on carrier's property, using carrier's facilities and tools, loaded and tied down, with chains, turnbuckles, bolts, washers and nuts, eight (8) automobile trucks, four (4) trucks to a car, on cars Nos. TTX 473926 and TTX 473737 at the carrier's Automobile Loading Platform, East Bridgeport Yard, Track 1, for shipment to the U. S. Air Force, Seattle, Washington. The loading and tying down of these automobile trucks,

was within the Scope Rule of the Agreement between the Carrier and the Organization. But since the work existed only by virtue of the Carrier's contract with The Baltimore and Ohio, it ceased to exist when that contract came to an end. Had the Carrier's new contract with The Baltimore and Ohio provided that the interlocking and signal work should be supplied by the Carrier, the Claimants would have been entitled to it, but the Organization has no right to dictate the terms of the contract between the two railroad companies. See Awards 643, 2425, 4353 and 5878."

NO EMPLOYES HAVE SUFFERED LOSS

Assuming for the moment that there is merit to the employes' contention that this work belongs to the carmen, the employes must show that someone whom they represent has suffered loss by being deprived of this work. The claim is made on behalf of the named employes for payment at time and one-half because of not having been called for this work on their rest days. This necessarily presumes that they had a demand right to a call on their rest days, whereas, if the work belongs to the carmen's craft at all it would have been performed by other car inspectors who were on duty during their regular work days on the date of the claims.

As stated in carrier's statement of facts, there are other claims identical to this which are being held in abeyance to be settled on the basis of the final disposition of this claim. In each of the other claims the employes have named claimants who were on their rest days on the particular dates, and thus every claim is for time and one-half because various employes allegedly were deprived of work on their rest days at penalty rate. In each and every claim, it is the carrier's contention that even if this work had been contracted to the carmen's craft, which it has not, the claimants would not have been called on their rest days for the reason that the car inspectors who were on duty would have performed the work.

The instant claim must 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.

Claimants here are employed by Carrier as Car Inspectors at East Bridgeport Yard. At this point Carrier operates a Car Yard, and as a part of the facility, there is an automobile loading platform.

That on July 26, 1963, Carrier permitted two employes of Metropolitan Body Company, to enter its property for the purpose of loading for shipment eight automobile trucks for Metropolitan Body Company. The work performed by such outside employes consisted of loading and tying down the trucks.

The Organization contends that Carrier had no right under the current Agreement covering Carmen, to use outside employes to perform the required work, and that such action by Carrier is clearly a violation of Rule 107 of the Agreement between the parties here, by its failure to use Car Inspectors stationed at Yard here involved to perform the work of loading and preparing the automobile trucks for shipment. It is further contended that Car Inspectors at this location have performed such work for many years prior to the date in question, and are now depriving such Carmen the work for which they are demanding pay for 8 hours at the time and one half rate of pay for such work performed by outside employes of Metropolitan Body Company.

Carrier for its defense to said claims and allegations by the Organization, does not deny that prior to July 26, 1963, it had used Car Inspectors at Bridgeport Yard to perform the work as alleged here. It further contends that it has in no way violated the provisions of the Agreement between the parties.

That in 1955, new tariff rates became effective at Bridgeport, and that the new rates included a charge for pick up and loading where Carrier used its Inspectors there to perform such work as here involved. That in 1963 Metropolitan Body Company advised Carrier of their preference to do the loading by its own employes, thus reducing the tariff rate by eliminating the loading charge.

After reviewing the record here before the Board, we find nowhere in the Agreement that Carmen have the exclusive right to perform the work as here contended by the Organization. While Carrier does not deny that Carmen performed work, as claimed, the record does not establish through custom and practice that the work belongs exclusively to Carmen.

The work performed here involved was not performed by employes of Carrier. The shipper in using its own employes to perform the work required was responsible for the work, and its performance. While the work was performed on Carrier's property, this does not put the responsibility upon the Carrier. When the shipment was prepared for shipping after being loaded on the cars, the Car Inspectors still were used to check the shipment before it left the yard to destination.

We find nothing in the Scope Rule or Rule No. 107 that requires Carrier to assign Carmen to perform the work as alleged here.

The claims should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1966.

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