Award No. 5550
Docket No. 5409
2-CB&Q-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago, Burlington & Quincy Railroad Company violated the provisions of the Current Controlling Agreement when it improperly assigned other than carmen to test air brakes and couple air hose at Murray Yard, North Kansas City, Missouri on October 27, 1965 and November 1, 1965.

2. That accordingly the Chicago, Burlington & Quincy Railroad Company be ordered to compensate Carmen F. F. Nester and M. H. Schroeder two (2) hours and forty (40) minutes each at the punitive rate for said violations on October 27, 1965 and November 1, 1965.

EMPLOYES' STATEMENT OF FACTS: Carmen F. F. Nester and M. H. Schroeder, hereinafter referred to as the Claimants, are regularly assigned as such at Murray Yard, North Kansas City, Missouri by the Chicago, Burlington and Quincy Railroad Company, hereinafter referred to as the Carrier.

There are three shifts of Carmen (inspectors) employed seven days each week, including holidays, in the Murray Yard at North Kansas City, Missouri. Claimant Nester and Claimant Schroeder were off duty and available on October 27, 1965 and November 1, 1965, respectively.

On October 27, 1965 Switchmen were assigned to give air brake inspection and test and couple air hose in connection with same on nine (9) car SLSF transfer train prior to departing the Murray Departure Yard.

On November 1, 1965 Switchmen on Job 45 were assigned to give air brake inspection and test and couple air hose in connection with same on four (4) car transfer train prior to departing Murray Departure Yard bound for Intercontinental Machinery Corp.

loss in pay; neither is there a showing that he would have been called to work at overtime. See Second Division Awards 3672, 2967, 4086 and 4112.

Therefore, it is our conclusion that Employes' first claim in this dispute should be sustained, but that the second claim must be denied."

These principles are applicable in this docket, and should be followed if a violation is found.

In summation, the Carrier avers this claim is invalid because —

1. Article V of the September 25, 1964 Agreement applies only to "trains." This is a technical term, which must be given its technical meaning as defined in the operating rules of the railroad industry.

2. The yard movements made at Kansas City on October 27 and November 1, 1965 consisted of the cut of nine cars in interchange and four cars to be delivered to an industry. In neither case were markers displayed, and they were not "trains."

3. The Organization sought a rule which would have covered the coupling of air hoses on "cuts of cars" but did not obtain such language in the final agreement.

4. The Agreement cannot be interpreted to apply to "transfer train and yard train movements" as those terms are used in ICC rule. Those rules were written to insure safety to employes and not to allocate work between different groups.

5. Part 2 of this claim, requesting payment of two calls, is simply a demand for a penalty payment. The claimants suffered no loss, and under no circumstances would they have actually been called from their homes to report for work to perform this service.

For these reasons this claim must be denied.

(Exhibits not reproduced.)

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.

The service required which gave rise to the claim in this docket, was a yard movement, performed by yardmen. It was, therefore, not a "road" movement so it could not have been "an outbound train" as referred to in Article V

of the September 25, 1964 Agreement. In fact, the movement to the SL&SF Yard at Kansas City, where the CB&Q Murray Yard is located, is an interchange movement, exactly the same as the movement involved in the dispute decided by this Division's Award 5320. The precedent established by Award 5320 will be adopted here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1968.

LABOR MEMBERS' DISSENT TO AWARD NO. 5550

Article V of the September 25, 1964 Agreement reads in pertinent part:

> "In yards or terminals where carmen in the service of the carrier operating or servicing the train are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart, such inspecting and testing of air brakes and appurtenances on trains as is required by the carrier in the departure yard, coach yard, or passenger terminal, and the related coupling of air, signal and steam hose incidental to such inspection, shall be performed by the carmen."

The service required by the carrier as provided in the above-quoted rule was performed on the trains involved in this dispute. The hoses were coupled, the air was tested, and the train was inspected. There were carmen employed and on duty in the departure yard.

One of the trains not only departed the departure yard but had to depart from the CB&Q Railroad and travel over a line of road leading to the SLSF Railroad Yard in order to deliver the transfer train to the SLSF Railroad Yard. One of the trains departed from the departure yard and traveled over a line of road leading to the International Machinery Corporation.

The majority states in the findings in Award 5550 that:

> "The service required which gave rise to the claim in this docket, was a yard movement, performed by yardmen. It was, therefore, not a 'road' movement so it could not have been 'an outbound train * * * '"

The majority further states:

> "The precedent established by Award 5320 will not be adopted here."

Award 5550 is erroneous for the same reasons as pointed out in the Labor Members' Dissent to Award 5320. Four referees (Dolnick in Award 5341), (Ritter in Award 5367), (Coburn in Award 5461), (Ives in Award 5533) rendered sustaining awards which involved claims that switch crews performed the work in the same manner as was done in Award 5320 (Johnson) — a denial award. Evidently the four referees were cognizant of the Labor Members' Dissent to that award and also considered Award 5320 when preparing Awards 5341, 5367, 5461, and 5533. By reference the Labor Members' dissent to Award 5320 is hereby made a part of the instant dissent.

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Keenan Printing Co., Chicago, Ill. Printed in U.S.A.