

Award No. 5566

Docket No. 5440

2-LV-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. 96, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That the Carrier violated the current agreement when it improperly assigned Trainmen on September 7, 1965 to perform the work of Carmen in making inspection, air test, and the related coupling of air hoses on train of fifteen (15) cars in Biery Yard, Catasauqua, Pa.

That accordingly the Carrier be ordered to compensate Carman Marvin Ritter in the amount of two hours and forty minutes at the punitive rate of pay for September 7, 1965.

EMPLOYES' STATEMENT OF FACTS: Carman Marvin Ritter, hereinafter referred to as the claimant, is regularly assigned to car inspector position, was off duty at the time. He was available to be called for this work on September 7, 1965, but was not called.

On September 7, 1965 a train of fifteen (15) cars drawn by the Pullout was dispatched from Biery Yard, which is the departure yard at Catasauqua, Pa.

The one carman on duty at the time (3:00 P. M. to 11:00 P. M. shift) was assigned to inspect cars at Cementon, Pa., which is in his seniority territory, and Yardmaster assigned Trainmen to couple air hoses, make the proper air test and inspection thereto to these fifteen (15) cars, as provided for in the Power Brake Law, and after this work was completed train left departure yard at approximately 10:10 P. M.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including Carrier's highest designated officer, all of whom have declined to make satisfactory adjustment.

The Agreement effective September 1, 1949, as subsequently amended, is controlling.

1. There is no rule in the Carmen's agreement giving that class of employees the exclusive right to couple air hose and/or test air brakes.

2. The issue of trainmen coupling air hose and testing air brakes has been taken to this Board on previous occasions, the claims were denied and the carriers involved were upheld in the same principle herein involved.

3. The employees have failed to produce any rule or evidence to substantiate its position in this case.

4. The work herein complained of has never been assigned exclusively to any particular class of employees on this property.

Awards of the National Railroad Adjustment Board have been cited by the carrier in support of its position.

Carrier respectfully submits this claim is without merit and should 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 employee or employees involved in this dispute are respectively carrier and employee 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 issue raised in this dispute is similar to the issues disposed of by Awards 5192, 5439, 5462, 5463 and 5464 rendered by this Division subsequent

to the effective date of Article V of the Agreement of September 25, 1964 which is relied upon by petitioner in this dispute. It would be unwise to disturb the precedent established by these well reasoned decisions.

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. 5566

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 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 majority assert in their conclusion and finding that:

"The issue raised in this dispute is similar to the issues disposed of by Awards 5192, 5439, 5463 and 5464 rendered by this Division subsequent to the effective date of Article V of the Agreement of September 25, 1964 which is relied upon by petitioner in this dispute. It would be unwise to disturb the precedent established by these well reasoned decisions."

The records in this dispute do not support such conclusions. Every requirement in the rule for a sustaining award was met in this dispute. The hoses were coupled, the air was tested, the train was inspected, there were carmen employed and on duty in the departure yard and the train departed the departure yard. The award is palpably erroneous and we dissent.

**O. L. Wertz
D. S. Anderson
E. J. McDermott
R. E. Stenzinger
E. H. Wolfe**