Award No. 5698
Docket No. 5462
2-MP-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Missouri Pacific Railroad Company improperly assigned train crew to make repairs consisting of inspecting, removing and applying air hose on MP 24121 in the East Little Rock, Arkansas Yard on May 24, 1966.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate Carman E. J. Epps in the amount of four (4) hours at the applicable rate of pay.

EMPLOYES' STATEMENT OF FACTS: At Greater Little Rock, Arkansas, the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains their largest facilities, namely, large diesel shop, production air room, large hump yard, spot repair track and also repair facilities, including several inspection yards. The main facilities are in North Little Rock, Arkansas, but across the Arkansas River in Little Rock they have a passenger station, inspection point and also a yard in East Little Rock where carmen are not employed full time, but who are on duty there and sent daily from the North Little Rock Yards and were working in this yard at the time this violation occurred.

About 5:00 P.M., Tuesday, May 24, 1966, at the East Little Rock Yard the switch crew made inspection of air hose, removed it and applied new air hose to MP 24121. At this time Carman E. J. Epps, hereinafter referred to as the Claimant, was on duty. Claimant has assignment to Job #15, 3:00 P.M. to 11:00 P.M., work week Tuesday through Saturday, rest days Sunday and Monday.

Similar incidents occurred on two different occasions where claims were paid, and at no time did the Carrier state they had the right to make repairs to cars by other than carmen. The Carrier violated the agreement.

This matter has been handled up to and including the highest designated officer of the Carrier who has refused to adjust it.

Your Board set forth the reasons for denying the claim as follows:

> "The employes state that the carrier violated Rules 154, 32 (a) and 7 (c) of the effective Agreement when it failed to call the claimant, who was a member of the Overtime Board, to replace a knuckle on C&O Car 105504 on February 10, 1956 at Elk Yards, Elk, West Virginia at approximately 12:10 P.M.
>
> The carrier states that a Main Line Train en route from Handley, West Virginia to Russell, Kentucky stopped on the main-line at Elk, West Virginia, an intermediate point between terminals and that a brakeman found a knuckle on a car in the train was broken. The brakeman, a member of the road train crew, rather than go to the rear of his train and secure a replacement knuckle from the Caboose, took a knuckle from a car on an adjacent yard train and used it to replace the broken knuckle in his train, that replacing of knuckles is not work recognized as exclusively carmen's work. The car did not originate or terminate at Elk, that the service performed by the brakeman in replacing the knuckle was an incidental part of his duties as a trainman in expediting the movement of his train over the road.
>
> The specific work of replacing knuckles under the circumtances in this case, is not specifically covered by the rules cited by the employes. Therefore, we find that the work is not inclusively the work of the carman and was work incidental to the work of the brakeman, that the carrier did not violate any of the pertinent provisions of the effective Agreement. Therefore, this claim must be denied."

In the instant case, a yard crew handling a cut of cars replaced a ruptured air hose which was discovered when the brakes were applied after the cars had been assembled and the yard crew had coupled the hose. The yardman facilitated moving the cars they were handling by applying an air hose, thus avoiding unwarranted delay in the performance of their work. Replacing air hose is not listed in Rule 117 and is not work which had been contracted exclusively to carmen under the circumstances present in this dispute. For these reasons, the claim is not supported by the rules relied on by the Employes. It follows that the claim 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 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.

This claim arises out of the replacement of a ruptured air hose on a freight car by a switchman instead of an available carman at Carrier's East Little Rock Yard on May 24, 1966. Although no carmen are employed

at Carrier's East Little Rock Yard on a full time basis, carmen are sent there on a regular basis from Carrier's classification yard in North Little Rock, approximately three miles distant, and Claimant herein was working at the East Little Rock Yard when the disputed work was performed by a switchman. Petitioner contends that the Carmen's classification of Work Rule (Rule 117) was violated as the disputed work constituted repair of a freight car, or work within the scope of Rule 117 of the Agreement between the parties.

Carrier contends that any operating employe can perform the work in dispute, and that the switch crew by changing the defective air hose was merely performing necessary work incidental to the movement of cars to the North Little Rock Yard, where such cars would be inspected by carmen prior to further movement in an outbound train. In this connection, Carrier relies on earlier Awards of the Board to support its position that the work involved in this dispute does not belong exclusively to carmen either through practice or under applicable language of the Agreement. (Award Nos. 3614 & 4707)

The record reflects that the Brotherhood of Railroad Trainmen was duly notified of the pendency of this case and afforded an opportunity to file a submission. Furthermore, the effective Agreement between the Carrier and the Brotherhood of Railroad Trainmen was submitted in evidence and considered by the Board.

There is no evidence that an emergency situation existed. Moreover, Claimant herein was available to perform the disputed work. Likewise, it is undisputed that the work in question was performed in a yard and was not incidental to the movement of a train. Hence, the Awards relied on by Carrier are readily distinguishable from the instant case.

In view of the foregoing, we must conclude that the disputed work should not be performed by switchmen in preference to available carmen in the absence of an emergency situation or contrary past practice. Accordingly, we find that Rule 117 of the applicable Agreement was violated and that the claim should be sustained. (Award Nos. 1791, 5189, 5411 and 5615)

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.

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