Award No. 5759
Docket No. 5535
2-CB&Q-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

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

CHICAGO, BURLINGTON & QUINCY RAILROAD

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 give air brake inspection and test and couple air hose at Murray, Yard, North Kansas City, Missouri, on July 14, 1966.

2. That accordingly the Chicago, Burlington & Quincy Railroad Company be ordered to compensate Carman M. Barrera, two (2) hours and forty (40) minutes at the punitive rate for said violation on July 14, 1966.

EMPLOYES' STATEMENT OF FACTS: Carman M. Barrera, hereinafter referred to as the Claimant, is regularly assigned as a car inspector at Murray Yard, North Kansas City, Missouri by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Carrier.

In Murray Yard, North Kansas City, Missouri, the Carrier maintains three (3) eight-hour shifts of car inspectors seven days each week, including holidays.

The Claimant was off duty and available on July 14, 1966 to perform the above work.

Switchman Simmons was assigned to give air brake inspection and test and couple air hose in connection with same on eleven (11) car Industrial train prior to departing the Murray Departure Yard on July 14, 1966.

Trains are made up each day on all three shifts in the Murray Yard and depart to various locations in and around the Kansas City area. Carmen are assigned and on duty to perform the work in dispute on all trains departing the aforesaid Departure Yard.

This dispute has been handled with Carrier Officials up to and including the highest officer designated by the Carrier to handle such disputes, with the result that they have declined to make satisfactory adjustment.

Claimant Seely bid for it. Also, it appears that said Claimant has been steadily employed as a machinist and that he has suffered no 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 intra-terminal moveement made at Kansas City on July 14, 1966 consisted only of the cut of cars to be delivered to an industry. No markers were displayed, and this was not a "train."

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 rules. 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 a call, is simply a demand for a penalty payment. The claimant suffered no loss, and under no circumstances would he have actually been called from his home 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 waived right of appearance at hearing thereon.

A locomotive with eleven (11) freight cars attached departed Murray Yard, North Kansas City, Missouri, on date claimed, for movement to Pasco

Industrial District where the cars were to be set out or switched on industrial sidings at that point.

Carmen are assigned seven (7) days a week on all three shifts in Murray Yard to do the work of inspecting, testing air brakes and appurtenances on trains and coupling of air hose incidental to such inspections, as required by Carrier.

Two Carmen were on duty in Murray Yard and, while they were engaged in coupling interchange cuts of cars destined to other railroads, the Yardmaster, in the interest of conserving time, pressed a switchman into service to give air brake inspection and test and couple air hose before departure of the locomotive with freight cars that were to be handled, all within switching limits.

Claimant was off duty but available, on claimed date, if called.

The B. of R. T. which represents switchmen in Murray Yard was joined herein by a third party notice.

The principal issue in this case according to Carrier in its declination of the claim on the property is whether or not the "industry drag handled herein" constituted as "train", as that word was used by the parties in Article V of the September 25, 1964 Agreement.

The Employes agree and issue was thereupon joined.

This Division of the Board finds that Article V of the September 25, 1964 Agreement applies to all "trains", not just "road trains" which are required to display markers in conformity with Carrier's operating rules for movement on and over the line of road.

Claimant is entitled to be paid, despite Carrier's reluctance to recognize the mutuality of obligation there is in Rule 6(c) and (d) to call Carmen for Carmen's work in response to the reciprocal duty of available Carmen to report during their off duty hours to protect the work when called.

AWARD

Claim (1) sustained;

Claim (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1969.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 5759

This award is manifestly in error.

Nowhere in the record did the employes offer any proof that a train was involved as contemplated by Article V of the September 25, 1964 Agreement.

The first paragraph of Article V refers to yards or terminals "from which trains depart" and to "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, * * *." The record shows that a switch crew coupled the air hose between a **cut of cars.**

As pointed out to the referee the organization served a Section 6 notice under date of October 15, 1962, which included among other things the following:

> "(d) The coupling and uncoupling of air, steam and signal hose, testing air brakes and appurtenances on trains or **cuts of cars** in yards and terminals, shall be carmen's work." (emphasis added)

By requesting the above rule, which it did not receive in the final agreement, the organization recognized that the word "train" did not include "cuts of cars"—such as the industry drag involved in this case.

We dissent.

/s/ H. S. Tansley
H. S. Tansley

/s/ H. F. M. Braidwood
H. F. M. Braidwood

/s/ H. K. Hagerman
H. K. Hagerman

/s/ W. R. Harris
W. R. Harris

/s/ P. R. Humphreys
P. R. Humphreys

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