



Award No. 5766
Docket No. 5601
2-SP(T&L)CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

**The Second Division consisted of the regular members and in addition
Referee John H. Dorsey when award was rendered.**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Carmen)**

SOUTHERN PACIFIC COMPANY (Texas & Louisiana Lines)

Dated at Chicago, Illinois, this 10th day of September, 1969.

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the controlling agreement the Carrier improperly assigned Car Foreman A. O. Kilgore to inspect and check journal boxes on cars that arrived on trains in the Ennis Train Yard at Ennis, Texas, on dates October 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1966.
2. That accordingly the Carrier be ordered to compensate the following named Carmen eight (8) hours each on time and one-half basis on dates shown opposite their names:

Carman O. M. Stewart	October 1, 2, 1966
Carman B. G. Farrell	October 3, 4, 1966
Carman H. T. Marvin	October 5, 6, 19, 1966
Carman J. Simpson	October 7, 8, 28, 1966
Carman G. W. Evarts	October 9, 12, 1966
Carman J. R. Campbell	October 13, 14, 30, 1966
Carman R. H. Fudge	October 15, 16, 1966
Carman H. J. Jones	October 20, 21, 1966
Carman B. H. Campbell	October 22, 23, 1966
Carman J. S. Perdue	October 24, 25, 1966
Carman D. E. Ward	October 26, 27, 1966

EMPLOYEES STATEMENT OF FACTS: The Southern Pacific Company (Texas and Louisiana Lines) hereinafter referred to as the carrier, have carmen car inspectors employed in the Ennis, Texas, car department. There are carmen-car inspectors assigned in the train yard twenty-four (24) hours per day in three eight hour shifts, seven days per week. Prior to the time that the carrier purchased and installed electronic hot box detectors in the Ennis car department, the carmen-car inspectors were required to hand feel each journal box on cars that arrived in trains at Ennis Train Yards. After the electronic hot box detectors were installed and put into operation,

CONCLUSION: The carrier has submitted an issue which in essence stated:

Does the existing Agreement with the Carmen's Organization prohibit a foreman from reading a Hot Box Detector tape and prevent him from doing work (observation of roller bearing journals) necessary to arrive at a proper decision as to pulse indication on a Hot Box Detector tape? It is submitted that the answer to this question should be in the negative.

The carrier has shown:

1. That the Foremen and Supervisors' Association should be made a party to the instant proceedings before a proper decision in this case can be rendered.

2. Carmen inspect all cars for mechanical defects at Ennis, Texas, including the inspection associated with hot box detector so-called hot box readings.

3. The work claimed by Carmen is not work which has been performed by or accrues exclusively to any class or craft of employee.

4. The work claimed by Carmen is not covered by Rule 117 and such rule has no application to the instant case.

5. By filing claims of this nature the Carmen's Organization is requesting that progress be impeded in the railroad industry.

The carrier respectfully requests the Board to render a denial award.

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.

Carrier, in its Submission to the Second Division, moved that since the claim seeks to take from Foremen work which they presently perform, they, through their representative, American Railway Supervisors' Association — to perfect this Board's jurisdiction — be served with Third Party Notice. The prayed for Notice issued March 16, 1968. The Association responded under date of March 16, 1968, declining to intervene, stating:

"Our Association handles our claims on the Fourth Division of the National Railroad Adjustment Board. Hence, we would have no interest in any claim presented to your Division involving any of the Shop Crafts."

Notwithstanding the declination we in fulfillment of our statutory obligations as enunciated by the Supreme Court in *T-C.E.U. v. Union Pacific R. Co.*, 38U.S.157(1966), have made part of the record in this case and considered the Agreement between Carrier and the Association effective March 1, 1963, filed with the National Railroad Adjustment Board in compliance with the Railway Labor Act. We find nothing in that Agreement which specifically reserves to Foremen, exclusively, the work here involved.

Both of the parties herein have attempted to bring into the record evidence not adduced in the handling of the disputes on the property. We may not and have not given it any weight. The record before this Board is the record made on the property. Our jurisdiction is appellate; not trial.

Ennis, Texas, is a Division point on the Dallas Division of Carrier. In 1966 Carrier installed Hot Box Detector Scanners. The manner in which such devices function is a matter of common knowledge in the industry.

There is no proof in this record that any craft or class on Carrier's property has an exclusive contractual right to monitor the graph tape produced by the readout machine reflecting *prima facie* indication of a hot box. At Ennis it is monitored by the Foreman and in his absence by a Car Inspector.

During the period of the instant claims it was the practice at Ennis for the monitor — be he Foreman or Car Inspector — to observe the journals of cars of a train as it moves into the yard to determine whether a high reading on the tape came from roller bearing or friction bearing wheels. The normal roller bearing recorded heat pulse is much higher than that of a normal friction bearing. Consequently the intelligent reading of the tape as to whether there is in fact an indicated hot box requires visual identification of the journal. It, therefore, was the practice when the monitor — Foreman or Car Inspector — observed on the graphs an indication of a high heat reading to make a roll-by observation to identify the type of journal. He then made a determination as to whether there was an indicated malfunction. If so, he passed the word to Car Inspectors who made an *in personam* inspection and made findings as to whether there was in fact a hot box. If he found there was not the car was good ordered. If he found there was, he had two courses of action: (1) make repairs on the spot; or (2) bad order the car and have it set out for repair.

The issue in this case narrows as to whether a Foreman who had monitored the tape did work reserved to Carman when he visually identified the journal of a car or cars of a train which the graph indicated hot box.

In practice Car Inspectors were stationed one on each side of a train entering the yard to make a roll-by inspection. There is no question that is work exclusively reserved to Car Inspectors.

The averment of Petitioner is that when the Foreman came out he stationed himself, alone, in the position of one Car Inspector and made the complete roll-by inspection of the incoming train from the side on which he had stationed himself — otherwise stated, he displaced a Carman to whom the work was exclusively reserved. Carrier responds that there was always a Car Inspector on each side of the train and the sole reason for the Foreman's presence was identification of the type of journal.

The issue is one of fact. Petitioner has the burden of proving that Foremen took over the duties of Car Inspectors. All we find in the record are conclusionary conflicting statements of the parties which for lack of supporting evidence of probative value we cannot resolve. We, therefore, are compelled to dismiss the claim for lack of proof.

We recognize that a Foreman observing a passing train would not confine himself to identifying journal boxes. It is the duty of all employees of a railroad, regardless of class or craft, to observe a passing train for defects. Safety is the first commandment in this industry.

A W A R D

Claim dismissed for lack of proof

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Second Division

ATTEST: Charles C. McCarthy

Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1969.