Award No. 5791
Docket No. 5629
2-PC(NYC)-EW- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, AFL - CIO (Electrical Workers)

PENN CENTRAL COMPANY (Formerly New York Central Railroad Co.)

DISPUTE: CLAIM OF EMPLOYES:

Claim for eight (8) hours pay at time and one half for Electricians F. Sprague and W. T. McClellan, for work performed on units 910 and 897 at West 72nd Street, New York City, New York. This work was performed in violation of Transfer of Work Agreement dated June 25, 1964.

EMPLOYES STATEMENT OF FACTS:

1. On May 18, 1964 the carrier notified the electrical workers organization, through the secretary of System Federation No. 103, of its intent to transfer the inspection and maintenance of diesel locomotives from West 72nd Street, New York to Weehawken, New Jersey.

2. On June 25, 1964 the electrical workers organization signed an agreement with the carrier covering the transfer of the work described in the May 18, 1964 notice.

3. On August 5, 1964 the inspection and maintenance on the diesel locomotives was transferred.

4. On February 9, 1965 the West 72nd Street, New York forces were assigned to perform 30 day I.C.C. inspections on locomotives 897 and 910, such work rightfully belonging to the Weehawken, New Jersey forces.

POSITION OF EMPLOYES: It is the position of the employes that the carrier violated the transfer of work agreement dated June 25, 1964, when after transferring the work from West 72nd Street (which caused the abolishment of two (2) electrical workers positions at West 72nd Street) the carrier assigned the remaining forces at West 72nd Street to perform the 30 day I.C.C. inspection work on locomotives 897 and 910. This work rightfully belonged to the forces at Weehawken, New Jersey and was performed on an overtime basis by the West 72nd Street forces.

ment was not violated and the inspection was made because of the emergency condition which prevailed and service requirements of the carrier.

POSITION OF CARRIER: There was no violation of the transfer of work agreement dated June 25, 1964, as result of Diesel Units 897 and 910 being inspected at West 72nd Street on February 9, 1965.

The normal work required of shop craft employees in the inspection and maintenance of diesel locomotives was performed at Weehawken after the June 25, 1964 agreement. It was only on one particular date, namely, February 9, 1965, almost nine months after the June 25, 1964 agreement was reached, that an emergency condition existed in the West 72nd Street area requiring the inspection of two diesel units to permit carrier to protect the service. As indicated in carrier's statement of facts 6 of the 15 diesel units assigned at West 72nd Street were out of service and since there were only 9 Diesel units available and there were 11 yard assignments to cover, carrier arranged to have personnel at West 72nd Street make a 30-day inspection on Diesel Units 897 and 910. As a result, two yard engine and ground crews who would otherwise not be able to work the 4 P.M. trick would would have lost one day's pay and carrier would not have been able to provide the service required to satisfy its patrons.

Nothing in the June 25, 1964 transfer of work agreement gives to employees at Weehawken represented by System Federation No. 103, AFL-CIO, Railway Employes Department, the exclusive right to perform inspection and maintenance work on diesel locomotives in the West 72nd Street and Weehawken area. When the June 25, 1964 agreement was reached it was understood that the normal inspection and maintenance work would be performed in the Weehawken area rather than in the West 72nd Street area. This has been done since that time even on the date of this claim. However, when an emergency condition existed and insufficient locomotives were available carrier had every right to have two required locomotives inspected and placed into service. This action was not in violation of the June 25, 1964 agreement.

There is no evidence in the record to show that any shop craft employees at Weehawken lost any time on February 9, 1965. However, they are seeking an additional day's pay for service performed in the West 72nd Street area where they do not have any seniority. Their claim lacks support on the basis of claiming work in another seniority district. The June 25, 1964 agreement did not grant to employees at Weehawken any right to work requirements at West 72nd Street, New York City. The organization which has the burden to establish the claim, offered no burden of proof that the inspection work performed at West 72nd Street was exclusively reserved to electric workers at Weehawken, since West 72nd Street is outside of their seniority district.

Since the record shows that the organization has failed to sustain the burden of proof that the electric workers at Weehawken have the exclusive right to the inspection work at West 72nd Street under the June 25, 1964 agreement, the board should deny this claim.

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.

On May 18, 1964, the Carrier served a 60-day written notice on the Employees of its intention to transfer from West 72nd Street, New York City, to Weehawken, New Jersey, the work of inspection and maintenance of Diesel locomotives.

On June 25, 1964, the parties entered into an agreement effectuating the transfer in accordance with the protective provisions of Paragraphs I and II of the July 22, 1960, Memorandum of Agreement.

This dispute arose when, on February 9, 1965, the work force at West 72nd Street performed 30-day I.C.C. inspections on Diesel locomotives at that point.

The Employes assert that under the aforesaid Agreement the work belonged to and should have been performed by the force at Weehawken.

The Carrier's defense that an emergency existed which required and justified the use of the employees at West 72nd Street appears to have little, if any, merit. The record shows the Carrier's supervision knew in advance, or ought to have known, that additional power would be needed to supplement the 9 diesel units in operation on the 4 P.M. trick on February 9. Moreover, the alleged crisis could have easily been met by transferring the Weehawken men to West 72nd Street to perform the inspection work.

Under the June 25, 1964 Agreement the work clearly belonged to the employes at Weehawken and should have been performed by them. Accordingly, the Agreement was violated. Claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1969.

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