

Award No. 6031

Docket No. 5766

2-CB&Q-CM-'70

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current agreement, the Carrier improperly assigned other than Carmen to perform air brake inspection and testing of air brakes on passenger trains 1-10 (Denver Zephyr) and 17-18 (California Zephyr) departing the Lincoln, Nebraska Passenger Terminal from January 9 to March 1, 1968 inclusive.

2. That accordingly the Carrier be ordered to compensate the following off duty carmen the number of four-hour calls listed following each name:

G. W. Larkens	Twelve (12) four-hour calls.
H. E. Ottersburg	Seven (7) four-hour calls.
John Schnirl	Sixteen (16) four-hour calls.

EMPLOYEES' STATEMENT OF FACTS: Lincoln, Nebraska is a carrier division point, and is located midway on the carrier's main line between Chicago, Illinois and Denver, Colorado, approximately five hundred (500) miles either direction, East to Chicago or West to Denver.

Carmen G. W. Larkins, H. E. Ottersburg and John Schnirl, hereinafter referred to as the claimants, were regularly assigned as car inspectors at the Lincoln Passenger Terminal by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier.

The carrier maintains a passenger yard and terminal at Lincoln from which passenger trains depart. Carmen are employed and are on duty around the clock, seven days each week.

There is no other passenger car inspectors employed between Lincoln and Denver.

3. In any event, the claims cannot be sustained since they are purely penalty claims, and since the agreement will not support penalties, the Board has no jurisdiction to award them. These claims must be denied.

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.

The precise question on which this dispute turns is whether the inspecting and testing of airbrakes unrelated and not incidental to mechanical inspection, repairs, or coupling is, under the terms of Article V of the September 25, 1964 Agreement, work that is reserved exclusively to Carmen.

A careful analysis of the many awards of this Board compels a negative finding.

In Award 5485 the Board stated:

"From the evidence in the record it is seen that the trainmen did not make an air brake test **incidental to mechanical inspection and repairs**, which is exclusively reserved to carmen. The automatic brake application and brake release test made by the trainmen in this instance was incidental to the handling of cars in his (sic) train." (Emphasis ours.)

Under the circumstances of the instant dispute, where there was only a service application of the brakes followed by visual inspection, there is no basis for recovery.

The record here reflects that the Brotherhood of Railroad Trainmen was duly notified of the pendency of this dispute and afforded an opportunity to file a submission.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of November 1970.

LABOR MEMBERS' DISSSENT TO AWARD 6031 (DOCKET 5766)

Claim of Employes reads as follows:

"1. That under the provisions of the current agreement, the Carrier improperly assigned other than Carmen to perform air brake inspection and testing of air brakes on passenger trains 1-10 (Denver Zephyr) and 17-18 (California Zephyr) departing the Lincoln, Nebraska Passenger Terminal from January 9 to March 1, 1963 inclusive."

Article V of the September 25, 1964 Agreement provides in pertinent part:

"In yards or terminals where carmen in the service of the carrier operating or servicing the train are employed and are 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."

Lincoln, Nebraska is a division point and is located midway on the Carrier's main line between Chicago, Illinois and Denver, Colorado, approximately 500 miles in either direction, East to Chicago or West to Denver.

The Carrier requires a mechanical inspection, also, the Power Brake Law requires an air brake inspection and test be made on the trains involved in this dispute at this passenger terminal. The Carrier employs carmen at this passenger terminal who are on duty around the clock, seven days each week, and are available to make such inspection.

The Carrier required the trainmen to inspect and make the set and release of the air brakes, inspect piston travel brake rigging and perform the air test as prescribed by the Power Brake Law, as well as Carrier's own rules for inspecting and testing air brakes on passenger trains, while the car inspectors make the other necessary inspection on these trains.

The Referee stated in his proposed award, and which was adopted with the support of the Carrier Members, the following:

"The precise question on which this dispute turns is whether the inspecting and testing of airbrakes unrelated and not incidental to mechanical inspection, repairs, or coupling is, under the terms of Article V of the September 25, 1964 Agreement, work that is reserved exclusively to Carmen.

A careful analysis of the many awards of this Board compels a negative finding."

Inspecting and testing air brakes must be done concurrently with the mechanical inspection. Not only in the Employes' submission but the Labor Member furnished this Referee with copy of the Power Brake Law and copy of the Carrier's own rules that verified the fact that inspecting, testing and

the mechanical inspection of the air brakes made on such trains, as involved in this dispute, must be made concurrently.

Evidently the Referee was not interested in making a correct interpretation of the rule after making the statement in his findings quoted above; he quoted an excerpt taken from Award 5485 which involved the Alton & Southern, a small switching terminal covering a radius of less than 20 miles at East St. Louis, Illinois, trying to justify this erroneous award.

The Labor Members' dissent.

O. L. Wertz

R. E. Stenzinger

E. H. Wolfe

D. S. Anderson