

Award No. 6292

Docket No. 6137

2-GM&O-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned Train Yard Inspector J. A. Brumfield to repair bad-ordered freight car M.P. 130068 which had been removed from the train and placed on repair track May 9, 1970.

2. That accordingly, the Carrier be ordered to make the Carmen whole by additionally compensating Carman J. M. Raborn in the amount of a minimum 4-hour call.

EMPLOYEES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the Carrier, operates a train yard and repair track at Bogalusa, Louisiana. On date of May 8, 1970, freight car M.P. 130068 arrived in Bogalusa train yard at 11:50 P. M. in Train No. 32 which is a through freight.

Third shift Car Inspector D. S. Jenkins, while inspecting the train found a broken train line (main brake pipe) on the "A" end of M.P. 130068 which required extensive repairs. He placed a bad-order card on the car and the Yardmaster had the car switched out of the train. The train departed shortly thereafter.

Saturday morning, May 9, 1970, Mechanical Foreman Davis came to the repair track to determine how many bad-ordered cars were on hand. He noted M.P. 130068 there and placed a message to the Yardmaster to move the car back to the train yard and have the Car Inspector repair it.

The car was subsequently placed in the train yard on a track not in use and Train Yard Inspector J. A. Brumfield was required to repair it on May 9, 1970. The repairs required the removal of the air hose; removal of "U" clamp which is secured with two $\frac{5}{8}$ " nuts; removal of the angle cock; and the removal of $1\frac{1}{4}$ " brake pipe nipple and coupling. It then required the installing of new nipple and coupling and replacing the other parts which took approximately one hour.

Carrier has shown without question of doubt that this claim is not supported by the Contract, past practice or common sense and should 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 undisputed facts provide the key to the solution. In this case, a through freight train arrived at the Bogalusa yard one and one half hours late. It was discovered that a revenue car had a leaking train line (main brake pipe). In the judgment of the car inspector, it was advisable to bad-order the car and have it switched out of the train to the repair track. The train left shortly after this was done. This took place about 11:50 P.M. on a Friday night, May 8, when no repair track carman was on duty. On Saturday morning, May 9, the Mechanical Foreman saw the revenue car on the repair track. No regularly schedule carman would be on duty until Monday morning. In the Foreman's judgment, the repair should be made promptly, the car restored to a train and be on its way before Monday. To accomplish this, he had the car placed on an unused track in the train yard where it was repaired on that day by a Train Yard Inspector. At 4:10 A.M., Monday May 10, the car was on its way.

There is no disagreement that it was good business to move this car without delay and that the Carrier was not required to leave the car unrepaired until Monday morning. It is agreed that both the Train Yard Inspector and the repair track carman were qualified to make the repair and that both are on the same roster. Rule 510 of the Agreement so far as it covers this situation is clear and states simply, "* * *, nor will train yardmen be required to work on cars taken from trains to repair tracks."

The Carrier concedes that the intent of Rule 510 is to prevent sending train yard carmen to repair cars on the repair track. It argues that the same car sent back to the train yard becomes a proper repair job for a train yard carman. It also argues that the repair required only fifteen minutes, and concludes that when a car is placed on a repair track by mistake, the Carrier should not be penalized by calling an off duty repair carman to make a repair when a train yard carman on the same seniority roster is available to do the work in the train yard.

In this case there was not a mistake. It was a judgment decision to bad-order the car and place it on the repair track. This may or may not have been due to the time required to make the repair or the time required to switch the car out of the train so that the repair could be made with safety to the employe, or to enable the train to proceed without further delay, or to a combination of these factors.

Whether or not the car inspector used good judgment is not for this Board to decide on the claim and on the arguments presented. It is fundamental that

it is not for this Board to add to the Agreement or to the Rules to resolve a dispute, nor should a decision be based on speculation.

As agreed by the Carrier, it makes good sense to be able to correct a mistake without suffering a penalty for each mistake. In this case, however, an employe was entrusted by the Carrier with the responsibility and duty to exercise his best judgment under the circumstances. In the circumstances of this case, the employe chose to place the car on the repair track where it would be repaired normally by the repair track carman.

AWARD

Claim sustained

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1972.