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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6557
Docket No. 6372
2-N&W-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That the order by the Norfolk and Western Railway Company, issued by the General Foreman, Bison Yard, Sloan, New York, mandating that all journal box lids be closed by Hump Oilers immediately after journal boxes have been oiled, is a violation of the Current Working Agreement.

2. That the Norfolk and Western Railway Company be ordered to rescind such an order, and issue instructions in conformity with the Agreement.

'ndings:

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 apperance at hearing thereon.

Carrier maintains at Sloan, New York, its Bison Yard. In the transportation yard of this facility is a hump over which cars move at a slow speed (from 3 to 5 M.P.H.) when being classified or made up into trains. On either side and adjacent to the hump track are pits which were constructed to permit oilers to stand and direct oil through a pressurized nozzle (from an oil line) into the journal boxes, which had been opened in the receiving yard. This was the sole function of the oilers at the hump track prior to April 5, 1971.

On April 5, 1971 the General Foreman issued an order as follows:

"ATTENTION: HUMP OILERS

It is now essential that journal box lids be closed immediately after cars have been oiled.

In view, thereof, effective immediately all box lids possible are to be closed by the Hump Oilers immediately after journal boxes are oiled."

Whether or not the order above, and its implementation, constituted a violation of the Agreement is the substantive issue before us. The Organization alleges that Rule 129 of the Agreement as well as Safety Rule 1302 were violated. Those Rules read as follows:

"RULE 129

Trains or cars while being inspected or worked on by train yardmen will be protected by blue flag by day and blue light by night, which will not be removed except by men who place same.

1302. Employees working about equipment must protect themselves by displaying blue signal. A blue signal displayed at one or both ends of a locomotive, car or train indicates that workmen are under or about it; when thus protected it must not be coupled to or moved. Each class of workmen will display blue signals and the same workmen alone are authorized to remove them. Other equipment must not be placed on the track so as to intercept the view of the blue signals, without first notifying the workmen.

When emergency repair work is to be done under or about locomotives or cars in a train and a blue signal is not available, the enginemen will be notified and protection must be given those engaged in making repairs."

Carrier contends first that this Board is without the authority to grant the relief requested under the Railway Labor Act. In support of this position Carrier cites a number of awards which in essence hold that the Board is not empowered to direct a Carrier as to how it shall conduct its operations but merely has the authority to interpret and apply the rules agreed upon by the parties. This position is well settled and we concur in it. However, it is equally well settled that the prerogative of management to make decisions connected with its operations are limited by the collective bargaining agreements which it has made. The instant claim goes to the issue of whether or not an operating decision was in conflict with a Rule of the applicable Agreement, and the possible remedy.

Carrier next advances the argument that the Claim should be dismissed since there is no claim for money involved and there is no identifiable claimant. We do not find that the awards cited by Carrier in support of this argument are relevant to the dispute involved herein. A reading of Section 2 of the Railway

Labor Act and Circular 1 of the National Railroad Adjustment Board indicate that this Board has the authority to deal with disputes "concerning rates of pay, rules working conditions". Rule 129 is a Rule of the Agreement and deals with working conditions; yet no interpretation or application of this rule could conceivably deal with a claim for money. We do not find that the Board is estopped from handling disputes involving rules such as this (see Awards 1393, 1424, 1462, 1466, 6034, 6051 and others).

Carrier alleges that the Claim is deficient in that servicing journal boxes is not "worked on" as contemplated by Rule 129. Carrier states, quite accurately, that the task of the oilers at the hump does not require them to be on, under or between the cars, and cites Award 5301 dealing with a similar issue. In that award we said:

> "...we are not satisfied that the record in this case has established either that Claimant had to climb on, between or under the cars while performing his work or that the oiling of passenger cars while they are standing in a passenger station constitutes a clear and a present danger to employees who perform the work from the side of the cars without getting on, between or under them."

The instant case must be distingusished from the one above, however, in that the cars in this case were moving past the hump track oil pits (three cars per minute according to the Carrier and five cars per minute according to the Organization) rather than standing still as in the case cited.

Carrier further urges that journal boxes were serviced for more than twenty (20) years without the use of the blue signal, and also at other locations in a manner similar to that in this case. Carrier presented no evidence on the property in support of its position on similar operations and we do not agree with its past practice argument: the past practice cited did not deal with oiling and closing journal boxes on moving cars..

Carrier's April 5, 1971 order and the parties' agreement on the current practice of oiling at the hump track constitute sufficient evidence in support of the claim. In making this finding of a violation of the Agreement we make no judgment on the safety or lack of safety implicit in the oiling and closing of the journal boxes; neither do we instruct Carrier as to how this operation should be carried out. We are stating, however, that the order of April 5, 1971 and its implementation was in violation of Rule 129 of the Agreement and of Safety Rule 1302.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of July, 1973.