

The Second Division consisted of the regular members and in addition Referee Louis Yagoda when award was rendered.

Parties to Dispute: (System Federation No. 12, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Carrier improperly assigned D.W.P. Car Inspectors to inspect cars in the Itasca train yards on dates of November 24, 1971; November 26, 1971, November 27, 1971, and December 5, 1971.
2. That accordingly the Carrier be ordered to compensate Carman Randy Magnusen eight (8) hours at time and one-half for November 24, 1971; Carman Calvin Hawerth eight (8) hours at time and one-half for November 26, 1971; Carman Joseph Triske eight (8) hours time and one-half for November 27, 1971; and Carman Bernard Sisle, eight (8) hours at time and one-half for December 5, 1971.

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 parties stipulate that on the dates set forth in claim, Car Inspectors employed by the D.W.P. Railroad came into the Chicago & North Western yards at Itasca and there inspected freight cars destined for delivery to D.W.P., placing "bad order" cards on those found defective. It is undisputed that said cars had been inspected by appropriate C & NWT employees at various locations prior to being dispatched to Itasca. It is also undenied that Claimants were off-duty Carmen and available for service on the dates involved.

Rule 138, cited by Employees, plainly includes the functions of "inspecting" freight cars as well as "car inspectors" as part of carmen's work.

Carrier's contention is that there was no usurpation of the work of its carmen employees inasmuch as these inspections were of a supplementary nature to assure operative loading suitability. Such inspections are normally made at designee's Duluth yard, a linkage point between the two railroads, some 6 to 7 miles from Itasca, but Carrier and receiver sought by these means to avoid costs and delays of return movement of cars rejected at Duluth.

No matter how justifiable the motive in economic terms, the work involved has not been shown to be other than that customarily performed by employees of carmen craft covered by Agreement rules and intended by the latter to continue to be assigned to them, absent emergency conditions preventing such assignment (we find none here). A line of decisions on this Division - Awards No. 3521, 4566, 4681, 5953, dealing with similar situations has precedentially so established.

In line with settled Division precedent, claim will be limited to the pro-rata rate for the actual work time involved in performing the claimed work.

A W A R D

Claim sustained, limited to compensation at the pro rata rate for the actual work time involved in performing the claimed work.

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 6th day of February, 1974.