

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 121, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(The Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the current agreement was violated when Carrier assigned other than Carmen, Western Way and Inspection Bureau, referred to as W.W.I.B., outside contractor, to inspect tri-level cars, and loads at B.O.P. plant located at Arlington, Texas beginning October 16, 1975.
2. That accordingly, the Carmen be made whole by additionally compensating Carmen M. R. Fuller and A. Brantley Jr., who was off duty and available at the time relevant, in the amount of eight (8) hours each day Monday through Friday, beginning October 16, 1975, and continuing until this dispute is settled, at the over-time rate of pay.

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.

On October 16, 1975, the Carrier initiated certain inspection duties by employes of the Western Weighing and Inspection Bureau at Arlington, Texas, in the freight car loading area of the General Motors Corporation automobile assembly plant. The work involved inspection of the condition of automobiles after they had been loaded on bi-level or tri-level freight cars. This portion of the work is not here in dispute.

The WW&IB employes also were employed to determine if the automobiles were securely fastened on the freight car racks, and for this purpose inspected the tie-down devices, which include idlers, chains and ratchets. Upon determining that such tie-down devices are improperly affixed, report

is made to a firm employed by the automobile company for correction. If such devices are determined to be in disrepair or missing, the Carrier is notified, and Carmen (the Claimants herein) make the necessary repairs or supply the missing parts.

Four Carmen -- two on the day tour of duty and two on the afternoon tour of duty -- were employed by the Carrier at its facility nearby. This was true prior to the commencement of WW&IB work at Arlington and also continuing after the inception of the work.

The Organization claims that the work performed by WW&IB employees in inspecting the tie-down equipment on the cars should properly be performed by Carmen. To do otherwise, claims the Organization is in violation of Rule 83, which reads in part:

"Carmen's work shall consist of building, maintaining, dismantling, (except all wood freight cars), painting, upholstering, and inspecting all passenger and freight cars, both wood and steel ..."

Violation is also claimed of Rule 22(a), which reads in pertinent part:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft ..."

No issue of repair, maintenance, etc. is involved here. Rather, the issue is solely as to inspection which, as to "all freight cars", is clearly encompassed as Carmen's work in Rule 83. The question for Board determination is whether inspection of the tie-down devices in the particular circumstances applicable here is Carmen's work, or, in the alternative, whether the inspection as here involved has to do not with the freight cars but with an inspection of the secure loading of the shipper's products.

Numerous previous awards deal with repair or replacement of devices and equipment integrally related to the loading and shipment of goods on a freight car. Some awards make findings in favor of the Organization; for example Awards Nos. 4974, 4664, 4598, 4864, 4865 and 4515. Award No. 4515, for instance, finds automobile racks an "integral part" of the freight cars.

Awards Nos. 5040 and 5361, among others, find to the contrary. In Award No. 5040, racks are found to be "not integral parts" of the car. Award No. 5361 states, the "disputed work of positioning the tie-down device does not belong exclusively to the Carmen".

As to inspection of cars generally, Awards Nos. 4831, 4414, and 3521, support the exclusive rights of Carmen, even in instances where inspection is "visual" or incidental.

As to the present case, the Board reaches these conclusions: No issue of repair is involved, so no determination on this point is needed. The inspection involved is specifically limited to the placement and security of the shipment. No question is raised as to the shipper's responsibility to secure his loads. The inspection called for by WW&IB employes is to check on the security of the loads -- not the condition of the freight car. In particular as to the tie-down devices, it is to determine if such devices have been properly utilized. Incidental to the inspection is the discovery of defective or missing tie-down devices. To determine that this residual portion of inspection of the shipper's work is in fact "inspecting ... freight cars" would be to stretch the restrictions of Rule 83 too far.

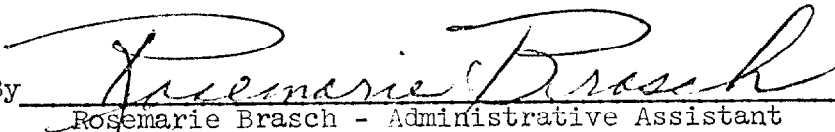
The tie-down devices, further, are actually applied to the automobiles by the shipper. It is this work which primarily is subject to inspection, and it cannot be found that this is the exclusive right of carmen.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1978.