

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Baltimore and Ohio Chicago Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore & Ohio Chicago Terminal Railroad Company (B&OCT) violated the Agreement, specifically Rule 76 when a Foreman performed inspection work reserved for the Carmen's craft.
2. That the B&OCT, hereinafter referred to as Carrier, be ordered to compensate Carman G. Cyr, hereinafter referred to as Claimant, for two hours and forty minutes (2 hrs., 40 minutes) at the penalty rate as per Rule 5.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 May 3, 1976, at about 9:15 a.m., Carman James Bailey was instructed and did inspect cabooses C&O 3129 and B&O 3868, i.e., checked piston travel, visually observing the brake shoe wear and other mechanical inspection. Later in the day B&O cabooses C-3913 and C-3916 were spotted at the same location but instead of sending a Carman to perform the inspection, Carrier assigned Foreman Wozniak to "visually check these cabooses by walking around and through them to determine if either caboose was in need of any repairs". These events transpired at Barr Yard, Chicago, where Carrier operates a car repair facility for the maintenance, repair and inspection of freight cars, cabooses, etc. on a three (3) shift, seven (7) day a week basis. The record states that the Barr Yard facility is for "the maintenance, repair, and inspection of freight cars, cabooses, etc."

In his letter of March 1, 1977, addressed to Mr. Edward Schlining, General Chairman, Bro. Railway Carmen of the United States and Canada, Mr. H. D. Swann, Manager, Labor Relations of Chessie System, in discussing this case, wrote Mr. Schlining as follows, "There is nothing in any rule of the agreement that prohibits a foreman from making a visual operation or inspection as was done in this case". (Underlining ours).

Rules 23 and 76, Agreement the Baltimore and Ohio Chicago Terminal Railroad Company and certain classes of Employees, including Brotherhood of Railway Carmen of America, read, in pertinent parts, as follows:

"Rule 23

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

"Rule 76

Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; Carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks, building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with Carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing in vats), all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxyacetylene, thermit and electric welding on work generally recognized as Carmen's work; and all other work generally recognized as Carmen's work.

"It is understood that present practice in the performance of work between the Carmen and boilermakers will continue.

Classification of work of Carmen includes all apprentices."

Employees showed that Carman G. Cyr was off duty and available and capable of performing the work involved. The provision of Rule 23, that foremen may do inspections "at points where no mechanics are employed", is inapplicable here, because a mechanic (Carman) was available at this 24 hour 7 day a week service at Barr Yard, Chicago, a major car repair facility.

Employees also contend that the earlier inspection that same morning of the other cabooses on the same train by a Carman called from track R-3 to track R-4 (the same track where the second two cabooses were spotted), was a recognition by Carrier that such caboose inspection was Carman's work.

Carrier does not dispute the Rules cited above, but contends that a mere visual walk-through observation or inspection of the two cabooses by Assistant Car Foreman Wozniak was not the type of inspection interdicted by Rule 76, that it involved no work by Wozniak, it was just an observation to see if any real inspection or work was needed. Carrier cites the Rule that train crews get off trains and inspect them when trains are switched and standing away from terminals, that Rule 76 was never intended to mean that no one except a Carman could ever visually inspect a car to see if it was travel worthy, or whether repairs were needed, that "Carmen have never been assigned to perform, nor have they performed, 'all inspection work' exclusive to all others, and, in this instance, the so-called 'work' performed by Foreman Wozniak was in the performance of his assigned duties as a supervisor. Accordingly, it was his decision, after visually checking, that B & O Cabooses C-3913 and C-3916 would not require the services of a Carman".

Carrier contends that when Foreman visually checked these cabooses by walking around and through them and determined that neither caboose was in need of any repairs or supplies, "and completed the Daily Caboose Report there was no necessity to call a Carman --- and none was contacted." (Underlining ours) The Carrier contends that Award No. 4239 is an all-fours case in its favor. We do not so find; it is an electrician's case and did not involve freight or passenger cars or cabooses.

Many Awards by the Board are cited by each side in this controversy, some of them going back thirty years, a number of those cited on each side being by a divided Board, with the decision turning upon the opinion of the Referee. It is apparent from the history of jurisdictional disputes over classification of work as craftsman's work or supervisory duties, that it is a very old and continuing one, brought into modern focus as the crafts jealously guard their working agreements with the Carriers, worked out with decades of disputes and experience between them, while supervisory personnel on the site may be more prone to seek a short cut. The instant contract between Employees and the Carrier dates from Sept. 1, 1926, and was filed with the Railroad Adjustment Board May 21, 1940. The Board has thus had 38 years of experience in serving as a Court of last resort on disputes between crafts and management as to the scope and division of duties and work under the contract involved here. It is a contract, not a law, that we are construing. In the construction of a contract it is our duty to seek the intention of the parties who made the contract.

The closeness of many of these questions before the Board is illustrated by the fact that of the 13 Awards submitted by the Carrier in this case in support of its contention, 7 carried Dissenting Opinions by all the Labor Members, while of the 8 awards relied upon by the Labor Members, 3 bore Dissenting Opinions by the Carrier Members.

Facts and circumstances generally illuminate the Work Rules of the Parties, and gives meaning to the words used. This presents no case of a train waiting on a lonely siding in a small town on the snow swept Plaines; these two cabooses were switched to R-4 at 11:45 a.m. (on the identical track upon which two other cabooses had been inspected by Carmen at 9:15 a.m. that day) in the large Barr Yard in Chicago. Track R-4 is the caboose track. Complainant Cyr is regularly assigned to Track R-4. It is thus apparent that these cabooses were placed on Track R-4 for inspection, supplies, and if required, repairs. It is in such large installations that the contract for Division of Labor is most jealously guarded, because of the available skilled labor supply, and in the interest of efficiency increasing harmony between all personnel.

Under circumstances of this case we find that the two cabooses set out on the Track R-4 were placed there for a conventional inspection by Carmen such as had been given the first two cabooses that same morning. The "walk through" by Foreman Wozniak was more than a supervisory walk-through to see if work was properly done. The fact that his walk-through resulted in a decision not to have a Carman inspect the cabooses showed that the Foreman's action was indeed an inspection.

Petitioner contends that Carrier breached the applicable work contract on May 3, 1976, when a Foreman inspected two cabooses on Caboose Track 12 - 4 in the Barr Yard in Chicago.

The Record is clear that the disputed work is inspection work belonging to Carmen under Carmen's Special Rule No. 76. The mere fact that the inspection may have been expedited by having a non-Carman perform Carman's work does not warrant a violation of the terms of the Agreement. No emergency was shown in extenuation of the violation of the contract.

To enforce the Work Agreement Contract, the claim will be sustained.

A W A R D

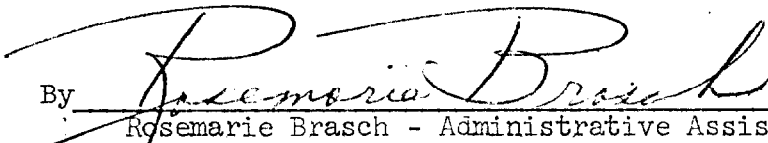
Claim 1 sustained.

Claim 2 sustained.

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 12th day of July, 1978.