

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. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the terms of the controlling agreement the Seaboard Coast Line Railroad Company violated Rules 26 and 100 when they used a General Foreman to make mechanical inspection on a group of tank cars at the Hercules Powder Company, in Franklin, Va., on September 10, 1975.
2. That Carman A. C. Johnson be compensated a four (4) hour call at pro rata rate as per Rule No. 5 of the current agreement.

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.

Carrier had complaints of delays of tank cars located at Hercules Powder Company at Franklin, Virginia. Carrier had no foremen or carmen stationed at Franklin, but had both stationed at Portsmouth, Virginia, an inspection point, thirty-five (35) miles away. Carrier sent D. L. Petway, General Foreman, from Portsmouth, Virginia the 35 miles to Franklin, Va., Carrier stating that there were "Reports of an unusual number of hot boxes on tank cars on Rocky Mount Division." General Foreman Petway was directed to look into the matter of tank cars which were being held at the Hercules Plant in Franklin, Virginia for extended periods of time. On September 10, 1975, Mr. Petway went to Franklin and made a spot check of a number of tank cars to determine if there was a problem with these cars which would require attention before the cars were loaded. After checking a sufficient number of cars to determine that mechanical attention would be required, he returned to Portsmouth and recommended that a program be set up to service cars at

Franklin. Employes appeal the Finding of W. L. Winsted that Foreman Petway's action was within the scope of Rule 26(b) of the Agreement, reading as follows:

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

(b) This rule does not prohibit foremen in the exercise of their duties to perform work."

The pertinent part of Rule 100, also cited by Employes, reads as follows:

"(a) Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars
***#"

Under Rule 26(b) had Foreman Petway been stationed at Franklin and had no Carmen been stationed there, we would have had a different case from the present fact situation, but in the present case Foreman Petway and Carmen both were stationed at Portsmouth, Virginia (but neither at Franklin) and it would have been just as easy for Carrier to have sent a Carman to inspect for hot boxes (which was typical Carmen's work) as to send a General Foreman.

However, the following year after the Winsted communication by Carrier quoted above, in a subsequent contention dated June 26, 1976, Carrier contended by its Assistant Vice-President, that General Foreman Petway made a determination that it was necessary to set up a program at Franklin to service cars at that location and that was strictly a management decision, and that Rule 26(b) recognizes that supervisory personnel may perform work consistent with their duties. The writer agrees that whether or not it was necessary to set up a program at Franklin to service cars is a management decision, but the first ruling by Carrier in this case admitted that Petway was sent to Franklin to inspect tank cars for hot boxes and such prior contention of Carrier that he went to inspect for hot boxes shows that General Foreman Petway was sent for a dual purpose, to do both inspection work and managerial work.

Carmen had no power to do the managerial work and the General Foreman was prohibited by the articles of agreement between Carrier and Employes, from doing the Carmen's work. He should have carried a carman with him to do inspections if he was basing his managerial decision upon the need for inspections. The record shows that while at Franklin, Va., General Foreman Petway inspected tank cars by opening journal box lids, checking the boxes for oil, and using the inspector's cut journal indicator, inspected axle journals for pits and cuts.

Employes contend that Foreman Petway knew before he left Portsmouth to go to Franklin, Virginia that he was going to inspect cars because he carried an inspector's cut journal indicator with him, "This is a gauge peculiar to Car Inspectors".

Carrier contends that if the inspection General Foreman Petway made of the cars was sufficient to constitute an inspection as contemplated by Rule 100, even so, Carrier has not conclusively shown that such work is not reserved exclusively for Carmen. A reading of the rules indicates that such inspections are reserved for Carmen except in those instances outlined in Rule 26(b) which does not prohibit foremen in the exercise of their duties, to perform work. One of the cases cited by Carrier gives an example of a Foreman doing car work to demonstrate to Carmen how the work should be done. A Foreman running an instruction class would not seem to us to violate the spirit of the agreement but that is not the situation presented here. Had there been a Foreman stationed at Franklin, who had received a call from Management Headquarters to tell why those cars were held up, and no mechanics stationed at Franklin, we would have a different fact situation. But in this case, there were ample Foremen and Carmen stationed 35 miles away and at a place where the Carrier maintains a road truck at Portsmouth, Virginia where employe Carmen employed in the Portsmouth shop and yard are used regularly for road trip work. It would have been just as easy for the General Foreman, if he were going to Franklin to make a management decision on a broad question of whether an operation should be set up at Franklin, which trip would require car inspections at Franklin, to take a Carman along to do the Carmen's work - to get facts as to the condition of the cars; as the General Foreman, he sought other information that might have been available as to whether the railroad or the Hercules Powder Company was responsible for the delay of cars at Franklin.

The determination of whether Hercules Powder Company was responsible for the delay of the cars would have been clearly outside the scope of employment of Carmen, and it would have been necessary for someone of a different category of employment, to go, to determine the condition of the cars themselves, then report to the General Foreman on the cars' condition so that the Foreman could weigh that information in making the recommendation that he did make.

The Record shows that several categories of information were apparently needed for the Carrier to make a decision as to what would necessarily be a considerable expense, to set up an additional operation 35 miles away from Portsmouth. It required a Carman's inspecting ability plus a General Foreman's managerial competence, for the decision. The contract between the Carmen and the Carrier required the cars to be inspected by Carmen, if Management wanted that information in making the managerial decision as to what was needed to end the expensive delays at the Hercules Powder Plant. The trip from Franklin to Portsmouth required only four hours and was a matter of considerable importance as General Foreman Petway recommended that a separate operation involving Foremen and Carmen be set up at Franklin to serve the Carrier's patron, Hercules Powder Company at Franklin.

The record shows that employe Carman A. C. Johnson was off duty, ready, able and willing to accompany the Foreman had he been called and that claimant and other Carmen employed in the Portsmouth Shop and Yard were used regularly for road trip work.

Each case stands on the facts in that particular case, and on reading this entire record, and studying the statements by which the Carrier and Employes would distinguish the authorities from the Second Division and Third Division cited in support of their respective positions, we are of the opinion that these findings would be unnecessarily prolonged if we took the time and space to discuss and point out differences in, and distinguish the various decisions by both Second Division Boards and Third Division Boards cited by the parties. We believe the facts in this case distinguishable on some ground in each case, from the opinions cited, and we have reviewed the facts in this case extensively, rather than cite opinions in other cases, as we believe the set of peculiar facts in this case makes the law of this case, and that evidence before us is clear and compelling enough to indicate a violation of the controlling agreement.

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 8th day of August, 1979.