Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8127
SECOND DIVISION Docket No. 8001-T
2-SPT-CM-'79

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. 162, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling Agreement, particularly Rules 117 and 29 when Car Foreman, C. R. Daniels assigned himself to perform carmen mechanic's work on May 1, 1976, Houston, Texas.

2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate Carman M. O. Jacobs in the amount of eight hours (8') at overtime rate for May 1, 1976, as he was available to perform this carmen's work.

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 instant claim alleges that Carrier assigned Car Foreman C. R. Daniels to perform inspection work on freight cars on May 1, 1976 at Houston, Texas. The claim alleges that a car inspector (Carman) inspected one side of the string of freight cars while the Car Foreman performed the identical work on the opposite side of the car.

Carrier alleges that no inspection was involved: that the Car Foreman merely recorded the repairs needed and compiled a switch list in order that the cars could be placed on the proper tracks for repairs. Carrier further alleges that the cars had previously been inspected by Car Inspectors.

Notwithstanding those allegations, Carrier further avows that:

> "Even if the foreman were inspecting cars, which we deny in this instant case, inspection of cars is not work exclusively reserved to Members of the ... (Carmen's) Craft by either practice or agreement."

To this the Board does not agree. We have long held that inspection of freight and passenger cars is contracted to Carmen under rules such as Rule 117 here governing. See Second Division Award Nos. 3687, 4414, 5632, 5953 and 7594.

The Organization states that the prior inspection alleged by Carrier was actually a roll-by inspection and the more thorough inspection is then made by the Car Foreman and the lead inspector. The Organization acknowledges that this practice has been in effect for a long period of time.

This Board holds to its previous findings that practice is only pertinent where a rule is unclear and ambiguous; that a practice cannot change the clear provisions of a rule. See Second Division Awards Nos. 3646, 6438 and 6594.

However, it is not clear to this Board whether Car Foreman Daniels was merely compiling information on defects previously determined or whether he was actually inspecting for additional defects after the roll-by inspection. If he was compiling information or evaluating the nature of repairs required (after inspection by Carmen) to determine the method or location for making repairs, which is a managerial function, there is no violation. If he was inspecting for defects, there was a violation. There is not sufficient evidence to support a conclusion, and we will dismiss the claim for lack of evidence.

A W A R D

Claim dismissed.

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 27th day of September, 1979.