Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9888
SECOND DIVISION Docket No. 9779
2-C&NW-CM-'84

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United
(States and Canada
(
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. That the Chicago and North Western Transportation Company assigned D.W.P. Car Inspectors to inspect and repair freight cars in the Duluth Train Yards on December 8, 11, 15, 16, 18, and 19, 1980.

2. That accordingly, the Chicago and North Western Transportation Company be ordered to compensate the following Carmen in the amount of eight hours pay per day at the time and one-half rate for the dates listed:

B. Sislo	December 8 and 15, 1980
J. Koski	December 11, 1980
J. R. Biscay	December 11, 1980
M. Bickford	December 11, 1980
H. Gronquist	December 15, 1980
L. Schier	December 16, 1980
J. A. Lagae	December 16, 1980
C. McRostie	December 18, 1980
J. Gotelaere	December 18, 1980
D. A. Gaynor	December 19, 1980
W. H. Tribbey	December 19, 1980

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 employes 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 Carrier, the Chicago and North Western Transportation Company (C&NW) operates train yards and a repair track at Duluth, Minnesota. The Fifth Avenue Yard is one of these yards. In the normal course of business the Carrier receives cars in interchange from the Duluth, Winnepeg and Pacific Railroad (DWP), which are delivered to the Carrier's Fifth Avenue yard. Upon receipt of these cars on a properly designated interchange track, C&NW Car Inspectors (Carmen) inspect the cars for compliance with FRA safety appliance standards and AAR car interchange

requirements. After these cars are approved by the C&NW Car Inspector, they are considered received in interchange. On the dates of claim, various cars received from the DWP were inspected by C&NW car inspectors and found to be unacceptable for interchange. Any car not accepted by C&NW inspectors was tagged to return to the DWP for their handling and repair. The C&NW gave the DWP notice of the rejection of these cars. However, instead of switching the unaccepted cars out and returning the cars to the DWP's repair facilities, the DWP dispatched its own Carmen to the C&NW property and the DWP Carmen performed the necessary repairs at the C&NW's Fifth Avenue yard. By doing this, the DWP saved the time which would be needed to switch the cars out and return them to their point of repair at the DWP's West Duluth facility.

Claims were filed by C&NW Carmen observing their rest days on the basis that their Agreement was violated when the service was performed by DWP Carmen and that they should have been called to perform the service performed by the DWP Carmen on C&NW property. The Carrier contends that under AAR Interchange Rule No. 89(G) (7) and (8) prior to acceptance of cars, the DWP was responsible for any damage to the cars and that it was the DWP's responsibility to correct defect prior to completion of the interchange. The Carrier states that ownership of the track on which repairs are performed is not the determinative factor in deciding which employees are to perform repairs; and that control of the car takes priority over the location where the work is performed.

We find that the Carrier violated its agreement with the Carmen when it allowed Carmen from the Duluth, Winnepeg and Pacific Railroad to come onto the Carrier's Fifth Avenue Yard in Duluth and perform repairs to the DWP cars which were not accepted in interchange. DWP Carmen are not covered by the Chicago and North Western Agreement, and hold no seniority at the Fifth Avenue Yard. The work in question was clearly Carmen's work, which work when it is performed at the Fifth Avenue Yard is performed by employees of the Carmen's craft covered by Chicago and North Western Agreement rules. This Board has held in prior decisions involving the same parties that the Carrier violated the Agreement when it allowed DWP Car Inspectors to come onto C&NW property to inspect freight cars destined for delivery to DWP. Please see Second Division Awards No. 6635 and 7616. So also the Carrier violated the Chicago and North Western Agreement with the Carmen when it allowed DWP Carmen to come onto C&NW property to perform work of the Carmen's craft on the cars which were found unacceptable for interchange. DWP Carmen have no seniority at the C&NW's Fifth Avenue Yard. But rather it is C&NW Carmen who hold seniority and the contractual right to perform Carmen's work at the Fifth Avenue Yard. The Carrier is clearly in control of its own yard. C&NW Car Inspector had in fact inspected the cars and had tagged the unacceptable cars for return to the DWP. The AAR Interchange Rules do in fact specify which Carrier is responsible for damage to cars and when the responsibility shifts. It is clear in this case that the responsibility for damage to the tagged cars had not shifted to the C&NW. However such rules do not supercede the C&NW Agreement responsibilities to its own employees, nor do such rules restrict in any manner the Carrier's rights, responsibilities and control of its own yard. It is clear that if the cars had been returned to the DWP repair facility in West Duluth as so tagged by C&NW Car Inspectors, DWP Carmen would have properly been assigned to such work. However, such are not the facts before this Board.

We shall sustain this claim limited to compensation at the pro rata rate for the actual work time involved in performing the claimed repair work. The employees have not met their burden of proof on the assertion that inspection work was performed by DWP Carmen, and the portion of their claim dealing with car inspection is denied.

A W A R D

Claim sustained as limited in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984