

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

Parties to Dispute: (Brotherhood Railway Carmen of the
(United States and Canada - AFL-CIO
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Conductor R. P. Hogan and Trainmen J. C. Lonhard and T. K. Lawrence improperly inspected and shopped thirty-nine (39) cars in the East Louisville Yards, Louisville, Kentucky, between 6:35 AM and 9:35 AM, June 14, 1980, and that

2. Accordingly, the Louisville and Nashville Railroad Company should be ordered to pay Carmen D. P. Pierce, P. Johnson and C. Smith three (3) hours each at the time and one-half 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 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.

On June 14, 1979, a train crew took two engines and caboose from the Carrier's Osborn yard, part of the Louisville Terminal, to the East Louisville Yard, which the Organization states is within designated yard limits. At the East Louisville Yard, the train crew was instructed to pick up 78 cars. The Conductor and two Trainmen, following instructions, prepared the cars for an air brake test. In so doing, they found 39 cars in bad order and then shopped these cars. As a result of the bad-order cars, the trip was cancelled and the train crew was relieved of duty.

The Organization argues that this car inspection work should have been performed by Carmen, under their work classification rules, and Article V of the September 25, 1964 Agreement, as amended by Article VI of the December 4, 1975 Agreement, which reads in pertinent part as follows:

"(a) In yards or terminals where carmen in the service of the carrier operating or servicing the train are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart, such inspecting and testing of air brakes and appurtenances on trains as is required by the carrier in the departure yard, coach yard, or passenger terminal, and the related coupling of air, signal and steam hose incidental to such inspection, shall be performed by the carmen.

(d) If as of December 1, 1975, a railroad has a regular practice of using a carman or carmen not assigned to a departure yard, coach yard or passenger terminal from which trains depart to perform all or substantially all of the work set forth in this rule during a shift at such yard or terminal, it may not discontinue use of a carman or carmen to perform substantially all such work during that shift unless there is not sufficient work to justify employing a carman."

A series of awards has established the criteria which require the use of Carmen for such work. As quoted in Award No. 6827 (O'Brien):

"Award No. 5368 of this Board determined that in order for carmen to establish the right to perform work under Article V, they must show that:

1. Carmen in the employment of the Carrier are on duty.
2. The train tested, inspected or coupled is in a departure yard or terminal.
3. That the train involved departs the departure yard or terminal.

Since that Award was adopted on January 31, 1968, this Board has repeatedly and consistently adhered to the foregoing tripartite criteria when faced with claims similar in content to the one before us."

In the present instance, the Board endorses the criteria set forth above. What is at issue here are factual considerations, disputed between the Carrier and the Organization, as to whether the established criteria were met. There is no question that Carmen are on duty and available in the Louisville Terminal. The Carrier states that at the East Louisville Yard there are no Carmen assigned. However, the Organization has shown to the Board's satisfaction that the East Louisville Yard is within the yard limits of the Louisville Terminal. The Organization's statement that Carmen are called for duty on occasion to the East Louisville Yard was not disputed.

As noted above, the train did not depart from the terminal at the time the cars were inspected. This would appear to show that the third criterion was not met and, if so, this would be sufficient to defeat the claim. In this particular instance, however, the Board finds otherwise. The train was certainly intended and scheduled for departure from the "yard or terminal". But for the very inspection in dispute (which had ordered the cars), the train would have proceeded.

The fact that the inspection caused a delay in departure (such not being known when the train crew was directed to make the inspection) does not change the intent of both the rule and the accepted three conditions. Put another way, the East Louisville inspection was for the purpose of approving the train's departure, and this would have occurred if the cars had been found in good order. This is clearly distinguishable from cases where no yard departure was scheduled.

There was a third party response made in this dispute by the United Transportation Union. Although submitted late, it notes that the UTU is in "full agreement" with the Organization's submission.

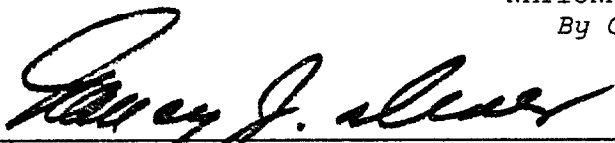
Although the Carrier disputes the propriety of the three-hour claim for these employees, as well as the availability of one or more of the Claimants, the facts as presented by the parties support the extent of the claim, except that, in keeping with accepted practice, the claim will be sustained at the pro rata rate rather than the punitive basis.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1984