

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

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

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Rules of the Current Working Agreement and Associated Rules; namely, Rule 29 and 118 of Agreement dated October 1, 1952, when Car Foreman R. Wade inspected forty-two (42) cars on the eastbound main in Tifft Yard, Buffalo, New York, on July 26, 1981.
2. That the Norfolk and Western Railway Company be ordered to compensate Carmen (sic) M. Skotnicki in the amount of three and one-half (3 1/2) hours at the time and one-half rate applicable to July 26, 1981.

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 dispute involves the inspection of cars at Carrier's Tifft Yard at Buffalo, New York. There are no Carmen employed at this yard. When any are needed they are called from one of the two nearby yards called Bison Yard and Buffalo Junction.

Some time after 5:00 p.m. on July 26, 1981, the Car Foreman at Buffalo Junction was notified that there were 33 cars (the Employees claim 42) to work at the Tifft Yard. There were no Carmen on duty at that time making it necessary to call someone from the overtime list. Calls were accordingly made and apparently only one Carman responded. Carrier claims that all other Carmen on the overtime list either refused to work or were not at home to take the call. Claimant was apparently not called as he had previously been a witness to a yard accident in which another Carman had lost a leg and as a result did not want to perform yard work.

The one Carman who had responded to the call, Mr. W. Wojtasiewicz, accompanied by Foreman R. Wade went to the Tifft Yard and apparently the cars were inspected. For this work Carman Wojtasiewicz was allowed three and one-half (3 1/2) hours compensation at the time and one-half rate.

Rule 118 of the Carmen's special rules reads in part:

"Classification of work

Carmen 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"

The Employees contend that when Car Foreman Wade accompanied Carman Wojtasiewicz to the Tiffit Yard that he also inspected one side of this cut of cars which they allege is a violation of their special rule. They also submit a notarized statement from Carman Wojtasiewicz contending that the Car Foreman did in fact inspect one side of these cars. They have submitted a three and one-half (3 1/2) hour time claim at time and one-half in behalf of the Claimant.

The Carrier contends that the Claimant has refused yard work in the past and accordingly was not available to take this call, that the Car Foreman did not actually perform any inspection work but merely accompanied the car inspector in the yard, and that there was no violation of the rules. They also submit a statement from the Car Foreman contending that he did not perform any inspection work. Both sides cite various awards in support of their position. Other than the statements submitted by Carman Wojtasiewicz and Foreman Wade neither side has presented any substantiation of their contentions.

There can be no question that under the provisions of the previously referred to Rule 118 that inspecting freight or passenger cars is Carmen's work. The difficulty with the Employees' position is, however, that the statement from the Car Foreman is in exact opposites of the statement of the Car Inspector, thus the two statements in effect cancel each other out. Further this Board has held on many occasions that we will not resolve issues of credibility between witnesses. Accordingly, the Board must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1984.