

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

1. That the Indiana Harbor Belt Railroad Company violated the current working Agreement, specifically Rules 154, 159, 32 and 168, when they allowed Manager Freight Car and Inspection and Repair, D. A. Schiewer, to inspect a high-wide load, car DTTX 60248, on November 1, 1986 at LaGrange Yard.

2. That the Indiana Harbor Belt Railroad Company be ordered to compensate Carman Lead Inspector T. Siniawaki four (4) hours' pay at the time and one-half Lead Inspectors' 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 November 1, 1986, a car was received from the Atchison, Topeka & Santa Fe Railroad at LaGrange Yard where no Carmen are employed. The train crew during their inspection was unable to determine if the car was an excessively high load. The height limit under the circumstances was 19 feet. The Carrier dispatched the Manager-Freight Car Inspection & Repair to determine whether this particular car was an excessively high load. He measured the car and it turned out to be 17 feet 11 inches. At this time he advised the crew to move the train to the Carrier's Blue Island facility at which point this car along with the rest of the train was inspected by maintenance of equipment employees.

The Organization argued that the Carrier violated Rules 154, 159, 32 and 168. Rule 154 states in pertinent part:

"Carmen's work shall consist of ... all other work generally recognized as carmen's work."

Rule 168 reads as follows:

"When necessary to repair cars on the road or away from the shops, carman and a helper when necessary will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, and wheels, and work of similar character."

The Organization further argued that the work belongs to the craft by bulletin.

The Carrier argued that no Rules were violated and that the only Rules cited in the Organization's Submission were Rules 154 and 168, not Rules 159 and 32. The Carrier contended the Classification of Work Rule does not mention "measuring" cars and the work is not exclusive to the Carmens' craft. The duties were performed within the responsibility of the supervisor. It further argued that even if a violation occurred, the claim was excessive since a Carman that was on duty at Blue Island would have been dispatched, and no overtime would have been allowed. The Carrier noted this service is electronically performed on part of the system without objection from the Organization.

The Board finds that Rules 159 and 32 were not cited in the record established on the property and, therefore, will not be considered by the Board. However, the Board is hard pressed to find either of them applicable in this case. The Board further finds that Rule 168 applies to repair work and does not mention inspection as in this case. The Organization has cited Second Division Award 4414, a case involving a Foreman inspecting cars on this property. In that Award the Board found that the Foreman did make inspections which were Carmens' work and that the Agreement was violated and the claims were sustained. The Carrier Members filed a Dissent and based the Dissent on the contention that the work had always been performed by Foremen as an integral and pertinent part of their duties. The Carrier in this case argued that making the initial determination regarding excessive height was an integral part of the duties of the supervisor involved. The Carrier also stated that if the car had been determined to be an excessively high load, then a Carman would have been sent from Blue Island to make detailed measurements for way-billing and clearance purposes and subsequent movement. The Board is not persuaded by these arguments. Likewise the Board is not persuaded by the Carrier's argument that this service is performed electronically elsewhere on the system. Carriers are free to automate. This is not a case of an automated situation. It is a case of a supervisor allegedly performing Organization work. The Board finds that Rule 154, the Classification of Work Rule, is


vague with respect to the type of work that was performed in this case. The Organization relies on the bulletin for the position of the Claimant, which states in pertinent part: "...must be able to inspect and measure open top loads." The Organization claimed that this entitles Carmen to exclusivity and, of course, the Organization bears the burden that Carmen had the exclusive right to perform this work. There is no showing in the Submission that anyone other than Carmen had been involved in measuring cars in the past. That, coupled with Award 4414 on the property leads the Board to sustain the Organization's claim in this matter. However, the Board finds the claim to be excessive, and the Board will award the Claimant 4 hours at the pro rata rate.

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 15th day of March 1989.