

Award No. 13515

Docket No. MW-13491

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it refused to allow B&B Equipment Operator A. H. Busch payment for two (2) calls for work performed in inspecting Derrick 205204, while enroute from West Quincy, Illinois, to Galesburg, Illinois on July 12, 1961.

(2) The Carrier again violated the Agreement when it refused to allow B&B Equipment Operator A. H. Busch payment for a call for work performed in inspecting Derrick 205204 while enroute to Wyandot, Illinois on July 25, 1961.

(3) Claimant A. H. Busch now be reimbursed for the exact amount of monetary loss suffered because of the violations referred to in Parts (1) and (2) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On July 12 and 25, 1961, B&B Equipment Operator A. H. Busch was regularly assigned to the operation of Derrick 205204.

At 5:30 P.M. and again at 10:00 P.M. on July 12, 1961, while enroute from West Quincy, Illinois to Galesburg, Illinois, Claimant Busch was required to make an inspection of the brake equipment, wheels and trucks on Derrick 205204.

At 4:25 A.M. on July 25, 1961, while moving with Derrick 205204 enroute to Wyandot, Illinois, Claimant Busch was again required to make an inspection of the brake equipment, wheels and trucks on Derrick 205204.

The subject inspections were made in accordance with the Carrier's standing instructions, which read:

"Chicago, Illinois
February 12, 1952

To All B&B Equipment Operators, MIJ-354:

give further consideration to the same issue (that issue being whether the inspection of his self-propelled machine by a B&B equipment operator while enroute in a train is incidental to his primary responsibilities), in the hope that a different result will obtain. Any such consideration, given by the Board for the second time, would be in complete disregard of the mandate of the statute, wherein it states, "the awards shall be final and binding upon both parties to the dispute."

Emergency Boards created by the President have repeatedly stated that their purpose is not to review awards of the Railroad Adjustment Board. Courts of law throughout the nation have likewise refused to review anything but monetary awards. In this manner, the clear and unambiguous words contained in Section 3, First (m) of the Railway Labor Act have been enforced and the obvious intent of Congress given effect. The awards are final and binding upon the parties to the dispute. Yet, Petitioner here asks this Division to review its own award and arrive at a different conclusion than that previously expressed. To so review Award 9964 would be clearly outside the Board's jurisdiction and contrary to Section 3, First (m) of the Railway Labor Act. See also Third Division Award 4788.

In summary, Carrier respectfully asserts that:

1. Inspection of a self-propelled machine by a B&B equipment operator enroute in a train is incidental to his primary responsibilities and is included in his monthly rate as outlined in Rule 43(a) and in the instructions quoted herein which have been in effect for more than thirty-nine years.
2. Petitioner admits that a revision of the current rules would be necessary to provide the payment here requested, as evidenced by Petitioner's proposal to revise the rules. Not having succeeded in revising the rules, Petitioner cannot now contend that the current rules provide any payment.
3. The instant dispute was settled by the Third Division in Award 9964, wherein the claim was denied in its entirety. The instant claim must also be denied since it presents the same dispute involved in Award 9964.

Proper consideration by the Board of the facts as outlined above can lead to only one decision, and that is, denial of the claim in its entirety.

OPINION OF BOARD: This issue was determined in Award 9964. The same issue between the same parties was presented in that dispute. Therein the Board held:

"On the basis of the record before us, it is quite evident that the inspection under consideration was incidental to his primary responsibilities at the time in question. One of the principal purposes for requiring Claimant to accompany the machine and to compensate him for his time, whether he worked or not, was to cover just this kind of duty. We do not regard the inspection in the category of service that would warrant an exception to Rule 46 (a)'s plain provision that when traveling in outfit cars after regular hours, 'the only time allowed' will be after 10:00 P. M. and before 6:00 A. M., with a minimum of eight (8) hours at half time rate."

This Board is committed to the doctrine of "stare decisis." Therefore, unless a previous award is palpably in error, we are committed to follow the decision expressed therein.

We concur with Award 9964.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1965.