Award No. 4286
Docket No. 3883
2-IHB-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

INDIANA HARBOR BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That the current Agreement was violated when the Carrier removed the Carmen from the Corn Products Company Plant and transferred their work to the Switchmen.

2. That Carmen Messrs. John Liber, C. Santoria, J. DiGangi and Sam Consonza be compensated at the rate of 4 hours at straight time rate for each of the following violations, and such future violations as may occur until the practice is discontinued.

EMPLOYES' STATEMENT OF FACTS: On the following dates the switchmen coupled air hose and gave terminal air tests in the Corn Products Refining Company Argo Yard:

3-28-58	Eng. #8814	Conductor	Marcheshi	30 cars 5:30 A. M.
4- 2-58	Eng. #8874	"	Lonigen	41 cars 3:00 A. M. to 4:30 A. M.
4- 2-58	Eng. #8816	"	Mattingly	50 cars 6:30 A. M.
4- 3-58	Eng. #8814	"	Chiowla	35 cars 5:30 A. M.
4- 4-58	Eng. #8814			45 cars 5:00 A. M. to 6:00 A. M.
4- 5-58	Eng. #8735			33 cars 6:45 A. M.
4- 6-58	Eng. #8822			33 cars 6:00 A. M.
4- 7-58	Eng. #8822			30 cars 4:15 A. M.
4-10-58	Eng. #8822			48 cars 5:30 A. M. to 7:20 A. M.
4-26-58	Eng. #8826	"	Herman	44 cars 11:59 P. M.

There was a continuous violation of the agreement from March 28, 1958 until July 19, 1958, when this work was returned to the carmen.

POSITION OF EMPLOYES: It is submitted that the work of coupling air hose, testing of air brakes has been performed by carmen in the Corn Products Plant for a number of years back. In 1940 the following bulletin was posted:

S-P-E-C-I-A-L B-U-L-L-E-T-I-N

Argo, Illinois December 20, 1940

To All Car Department Employes
Argo & Norpaul District.

Effective at once, there will be a job open at Argo, from 3 P. M. to 11:00 P. M. — 2nd Trick — due on account of Mr. Andrew Ecicks bid for Chicago Ridge Job, this job is seven days per week and consists of inspecting and repairing cars, in Argo Yard, C&A Belt Ry. of Chicago at Stickney and Corn Products Refg. Co.

The above job is open for bids in accordance with Rule 18.

Joe Palermo
G.F.

CC A. C. Holt
Local Chairman

The carmen continued to do the work of coupling air hose and testing air in the Corn Products Company Plant until April 24, 1943 when they were removed, the carrier taking the position that they were not allowed to blue flag the tracks. However on September 19, 1943 the work was again returned to the carmen, and they continued to perform same until March 1958 when they again were removed and their work transferred to the switchmen who continued to do the carmen's work until July 19, when the carmen were restored to their positions.

It has been definitely established on the Indiana Harbor Belt Railroad that the coupling of air hose and testing of air is carmen's work. Also it has been established that the work of coupling air hose and testing air in the Corn Products Plant is carmen's work.

Under date of September 20, 1943 Mr. Dobbins then General Car Foreman wrote the following letter:

"Chicago, Illinois Sept. 20, 1943
13.5

Mr. A. C. Holt Local Chairman
B.R.C. of A.
c/o Mr. G. R. Grills, Car Foreman
Blue Island, Ill.

Dear Sir:

Please refer to our letter to you under date of July 14, File 13.5, to which was attached copy of minutes of meeting held at Blue Island on July 6, in connection with the switch crews coupling air in the CPR Company's plant at Argo.

On September 15, the undersigned attended a meeting at Argo, in connection with securing permission from the Belt and the Corn Products people to use blue flags on the cars being handled by our crews. It was brought out at this meeting that we do not want any of

our employes violating any rules and since they were not allowed to blue flag the tracks at the Plant, naturally the only thing that we could do was to tell the inspectors not to go into the plant, which we did. It has now been agreed that we can blue flag certain tracks in their yard, effective 12:01 A. M., September 19, and this information has been passed along to our Mr. Palermo, who, in turn, will line up the inspectors accordingly.

Yours truly,

Signed/L. W. Dobbins
General Car Foreman

C-4
cy-Mr. J. Palermo"

During this period of time from April 24, 1943 to September 19, 1943 that the carmen were deprived of going into the Corn Products Company Plant, two carmen namely Messrs. J. Duminski and N. Oltz made claim for pay for four hours each for every time that the switchmen coupled the air hose and changed air hose in this plant.

The carrier agreed to pay these two men for any time they lost either through regular hours or overtime hours. However it developed that there was no time lost either way as they worked both regular and overtime hours.

Under date of September 13, 1946, Mr. L. W. Dobbins then General Car Foreman wrote Mr. Palermo Car Foreman in the Norpaul territory of which the Corn Products Plant comes under.

"Mr. Palermo, as mentioned to you on Thursday evening, please follow this up personally, particularly at LaGrange, as we do not want any of the train crews performing any of the work — such as coupling and testing air — on any cars out of either point. If your check develops that we need additional forces to protect LaGrange, kindly get in touch with this office immediately so that authority can be secured to protect these movements."

It will be noted here that Mr. Dobbins carefully stated he does not want any of the train crews coupling and testing air, which again shows that the coupling and testing of air is carmen's work on the Indiana Harbor Belt Railroad.

In 1943 a case arose in the Blue Island territory on the Indiana Harbor Belt Railroad and the Superintendent wrote the General Vice Chairman as follows:

"Chicago, Ill. August 26, 1943
13.5

Mr. M. J. McGuiness, Vice Gen'l Chairman
Brotherhood Railway Carmen
15316 Parkgrove Avenue
Cleveland, Ohio

Dear Sir:

In connection with our recent meeting here in Chicago at which time you presented the subject of train crews coupling up air on trains at Blue Island.

This was our Norpaul train crews which we found were doing this work at Blue Island.

For your information the Superintendent has issued positive instruction to all of his train crews operating out of that point that this practice must be discontinued at once.

I personally feel that this is permanently eliminated and if you happen to see any individual violations the crew will be immediately disciplined by their superior officers.

I believe this will correct any past condition that we have had at that point.

Yours truly,

Signed/W. L. Houghton
Sup't of Equipment"

In 1945, a dispute arose in the Blue Island and LaGrange territory, in where the train crews were coupling hose, and the Superintendent wrote the following letter:

"February 6, 1946

Mr. M. J. McGuiness
Brotherhood Railway Carmen of America
15316 Parkgrove Avenue
Cleveland 10, Ohio

Dear Sir:

To confirm our meeting here in Chicago this date in connection with Statement of Facts and Claims pertaining to the operation at Old Blue Island Yard and LaGrange.

I have hereby agreed that we will discontinue the practice at once and perform the work at both locations, namely Old Blue Island Yard and LaGrange, with I.H.B.R.R. Carmen forces.

With this consideration we will therefore agree to withdraw the claims and statement of facts which are now in Mr. Mitchell's possession and comply with the agreement enacted this A. M.

It will require 30 days to abolish contracts which now exist with foreign roads, namely the Grand Trunk Western in Old Blue Island Yard and C.B. & Q. at LaGrange. After these contracts have expired, all work at both locations will be performed by I.H.B.R.R. carmen.

Signed/W. L. Houghton
Superintendent of Equipment

4-5
I concur in this arrangement.

Signed/M. J. McGuiness
General Vice Chairman
Brotherhood Railway Carmen of America"

In 1944 a dispute arose in where the yard master coupled air hose on a train leaving the yards. Carman Holt made claim for 8 hours pay and was allowed same by General Car Foreman Mr. Dobbins.

On March 25, 1944, another dispute arose as the trainmen coupled the air hose on 25 cars and Carman Burwell made claim for pay for 4 hours, same was allowed by Mr. Dobbins, General Car Foreman.

October 20, 1944 Carmen Messrs. Myers and Purnick made claim for pay on account of train crew coupling hose on 35 cars, this claim was allowed by General Foreman Mr. Dobbins.

July 6, 1944 Carman Holt made claim for pay on account of train crew coupling air hose on 9 cars. This claim was allowed and four hours paid Mr. Holt.

January 28, 1945 claim for pay was made at Argo, by Carmen E. Esposito and Edward Mosanowski on account of Foreman Palermo coupling hose on January 19 and 26. These claims were allowed and paid these men by Mr. Dobbins General Foreman.

In 1949 a dispute arose which continued from March to September on account of trainmen coupling hose. This dispute was settled for $1,509.00 by Supt. S. T. Kuhn and General Chairman M. J. McGuiness and divided amongst the carmen involved.

March 1954 another dispute arose on account of trainmen coupling the air hose. The carmen made claim for pay under Rules 154 and 32. This dispute was settled by Mr. Wright Mechanical Superintendent, and he wrote Mr. McGuiness General Chairman as follows:

"September 19, 1955 c-l
File 13.5

Mr. M. J. McGuiness
General Chairman, Carmen
15316 Parkgrove Ave.
Cleveland 10, Ohio

Dear Sir:

Referring to our letter of September 15, 1955, File 13.5, regarding Case G-1160, in regard to claim presented to Blue Island, in connection with coupling air hose.

As brought out in our meeting on September 17 in this office, we are confirming settlement of $125.00 for the 17 claims listed on ex-parte Statement of Facts dated Chicago, May 4, 1954, and for five claims presented up to March 31, 1955. As agreed this claim is settled with the understanding that the above was Carmen's work. Therefore you may close your file.

Very truly yours,

Signed/J. J. Wright"

It will be noted that Mr. Wright very definitely states that the coupling of air hose is carmen's work.

October 11, 1955 another dispute arose on the coupling of air hose by Conductor R. T. Nevilles. The carmen made claim for pay and drew up an Ex-Parte Statement of Facts, claiming that Rule 154 was violated, and that two carmen, namely Messrs. A. J. Haslip and F. Vierum were entitled to be paid under Rule 7, Paragraph C.

This case was settled by Mr. Lyon, Master Mechanic by allowing the claim as presented.

From 1940 up to March 1958 the carrier paid all claims presented by the carmen when other than carmen coupled the air hose or tested the air. The agreement on the property provides for the coupling of air hose by the carmen, also the testing of air.

Mr. Dobbins' letters show that there is an agreement, Mr. Houghton's letters show there is an agreement, and Mr. Wright's letter of September 19, 1955 shows there is an agreement and spells it out as carmen's work.

In the original statement of facts drawn up on the property and signed by Mr. Lyon Master Mechanic and Mr. Dudley Local Chairman of the carmen, Mr. Lyon admitted that the rules were violated when he agreed to the following statement:

"As of this date these violations are still occurring."

The Carrier continues to allege past practice on this property, but nowhere do they prove that on this property the work involved was not generally recognized as carmen's work. The foregoing clearly shows that the responsible officials on this property recognized the work as that belonging to carmen when they paid claims when such claims were brought to their attention, regardless of who performed the work other than carmen.

This dispute is between the Carmen and the Indiana Harbor Belt Railroad and subject to be decided by the applicable agreement on that property and the interpretations placed on that agreement on the property involved.

The Carrier cites many Awards which are immaterial and irrelevant to the dispute on this property with the hope that this Board, with or without a Referee, will make an Award in this case on Awards rendered in lieu of deciding the case on the basis of the applicable agreement interpretations thereto and the conduct of the parties on this property over the years. This dispute originates in the Corn Products Plant, Argo, Illinois.

The Carrier also discusses the so-called Cheney Arbitration Award, which speaks for itself and shows that the Carmen were not a party to the dispute; therefore, any rights the carmen had and have were not changed.

The Carrier in addition attempts to confuse the Honorable Members of the Board by inferring that the Carmen are requesting that the Carrier employ a carman at a seniority point where no carmen are employed, which is far from the truth, as they admit in other parts of their submission that carmen are employed at this seniority point. This Division has ruled that work contained within the scope of an agreement cannot be lifted therefrom and assigned to others without making whole employes holding seniority rights to perform the work.

The facts of record and the controlling agreement rules, adequately sustain the statement of dispute in its entirety, and the Honorable Members of this Division are respectfully requested to so find.

CARRIER'S STATEMENT OF FACTS: The claim in the instant dispute involves the coupling of air hose and making air tests by Indiana Harbor Belt switchmen in the industry yard of the Corn Products Refining Company at Argo, Illinois during the period of March 28, 1958 to July 19, 1958.

The Corn Products Refining Company has its own yard which has certain storage tracts designated for each of the several railroads that pick up cars to handle in the respective classification yards for points of destination. The cars are placed on the storage tracks by the Corn Products Company own locomotive. Once a day, usually during the third shift hours or latter part of second shift, the accumulated cars for the Indiana Harbor Belt Railroad are picked up by that railroad's locomotive and brought to its Argo train yard approximately one-half mile away.

On the dates involved, in the instant dispute, a carman could not accompany the switch crew because he was needed for other necessary work in the Carrier's Argo Yard but carmen made the usual inspection and any repairs necessary after arrival of the cars at Argo Yard.

Inasmuch as the coupling of air hose and making air tests in connection with movements of trains is recognized as work incidental to the regular duties of a train crew, the carrier contends that the carman's agreement was not violated.

The carman's organization contends that the aforementioned work performed by the switchmen should have been performed by carmen and claim the carmen's agreement has been violated.

The dispute was progressed to carrier's final appeals officer who denied the carmen's claim on September 22, 1958.

POSITION OF CARRIER: The Corn Products Refining Company is located at Argo, Illinois, and is served by several carriers. The plant yard, which includes quite a number of tracks, is owned, operated and maintained by the Corn Products Refining Company.

All the switching within the plant, such as moving cars to the various loading platforms for loading and unloading and placing these cars on the tracks known as the outbound tracks, as well as taking the cars from what are known as the inbound tracks is performed by the plant's own locomotive.

Indiana Harbor Belt Railroad places cars on the inbound or receiving tracks and from the outbound or delivering tracks takes the cars which had been grouped and placed on the outbound tracks by the Corn Products Company locomotive.

During the period of time involved in the instant dispute, carmen were employed in the Argo Yard which is about one half mile from the Corn Products Refining Company yard but due to the excessive amount of work to be handled in the Argo Yard by the carmen, the switch engine was not accompanied by a carman on the dates claimed. The air hoses were coupled and air test made by the trainmen so that the cars could be moved out of the Corn Products Yard and transferred to the Argo Yard. The usual inspection and any repairs necessary were made after the cars arrived at Argo Yard.

The only work performed by the trainmen is to couple the air hose on these switch runs and after they have coupled the hose and cut in the air from the engine, the air brakes are applied by the engineer; the trainmen then walk along the train and ascertain if the brakes are set on all cars. Then, after the air has been released by the Engineer, one member of the train crew observes if the brakes on all cars have been properly released.

To have called carmen on these dates for the sole purpose of going with the crew was wholly unnecessary. The carmen do not have sole right to couple air hose. Numerous awards of this Division have held that coupling of air hose and making the usual air tests incidental to duties of train service employes is not a violation of the carmen's agreement.

In Award No. 3335, which concerned a dispute on a carrier also affiliated with the New York Central System, a train crew coupled hose and tested air. The employes contended the testing of air was car inspectors' work and claimed eight hours at premium rate of pay for the work performed by the conductor and crew. The employes relied upon Rule 25 — Classification of Work — which, except only to methods of removing paint, is identical to Rule 154 in the within dispute. The claim was denied with Findings which read:

> "On Sunday, July 28, 1957, a train crew moved an intact draft of 71 cars from Downer Junction Yard to Newell, Pennsylvania, for removal of wooden floors prior to being taken to McKees Rocks for dismantling. In connection with this movement from Downer Junction, the crew coupled hose and tested air to ascertain if the brakes were working. Claim is made that 'the work of testing air is Car Inspectors work, and thus that claimant Garee — who was on his rest day on this date, should be compensated in the amount of 8 hours' pay at premium rate.
>
> Since the subject air test was performed by trainmen incidental to the movement of a train, it was not work that is exclusively reserved to car inspectors (carmen) under Rule 25 (Classification of work) of the subject Agreement. A denial award is required."

In the dispute decided by Award 32, the award states "coupling and uncoupling air hose is recognized as carmen's work when performed in connection with their regular duties of inspection and repairs. However, it is impractical to confine this work to carmen at loading platforms, or on line of road and in switching cars".

In the dispute decided by Award 319, the employes claimed coupling hose on outbound trains is carmen's work. The award denied the claim on the basis "the coupling of air hose is recognized as carmen's work when performed in connection with their regular duties of inspection and repairs."

In the dispute decided by Award 457, claim was made that the coupling and uncoupling hose, testing and inspecting air brakes by trainmen and switchmen was a violation of the carmen's rules. This award denied the claim on the following basis:

> "Coupling of air hose and making the usual air tests, incidental to the duties of train service employes, is not a violation of the carmen's agreement. The coupling of air hose in connection with inspection and repairs to cars and air brake tests, incidental to inspection and repairs to cars, is carmen's work".

In addition to the foregoing mentioned award there have been numerous other ones, a few of these are 1305, 1554, 1626, 1627, 1636 and 3335. Also First Division Awards, numbers 17724, 16517, 16364, 16144, 14514, 12239, 18078 and 17522 and many others.

In the instant dispute the only question involved is the coupling of air hose and making air test on cars to be moved out of an industrial plant. Carmen would make the usual inspection and any necessary repairs after cars arrived at Argo Yard.

At storage yards of industries such as the Corn Products Company, there is no need for a technical inspection of the cars being moved to the carrier's yard where carmen are located. The train crews merely couple onto the cars, couple the hose where necessary, and run the air test required to see that brakes apply and release, see that no parts are down or dragging. Many inspections and tests must of necessity be performed by train crews in train operation and to rule that they are incompetent, or claim that such duties may only be performed by some shop crafts mechanics, would seriously hamper the operation and is not intended by any provision of the applicable agreement or required by other regulations.

It was not practicable for carrier to pull carmen off their regular assignment nor could they be spared to accompany the switch engine into the industrial yard of the Corn Products Company. It was unreasonable to request that Carrier be penalized to the extent here requested particularly when Carrier has not limited itself by rule to such performance by carmen.

In the claim as herein presented, the employes have made no reference to any rule violation, their claim really containing the general implication that the work in dispute belongs to the carmen's craft. Rule 154, which is the Carmen Classification of Work Rule, is quoted for convenience:

CLASSIFICATION OF WORK

"(a) Carmen's 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, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks, building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing in vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairs, oxyacetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work.

(b) It is understood that present practice in the performance of work between the carmen and boilermakers will continue".

This rule details at considerable length the various duties accruing to carmen; however, neither the coupling of air hose nor train departure tests is referred to therein. Neither Rule 154 nor any other rule of the agreement either specifically or inferentially defines this work as belonging exclusively to carmen. While the coupling of air hose and air test incidental to inspection and repairs of cars is considered and has been generally recognized as carmen's work, the coupling of air hose and air test incidental to train or car movements has not been so recognized. Under the latter condition this work is an essential part of the duties expected of train and yard service employes, as is best evidenced by past practices on railroads throughout the country for many years. From time immemorial trainmen have been required to do the work of this kind to a greater or lesser degree. Certainly they have always done it when the coupling was made between the locomotive and the balance of the train, or when coupling on cabooses, or when the coupling is made between strings of cars in doubling. There are many yards of this Carrier and other roads affiliated with the New York Central, as well as other railroads where trainmen do this incidental work.

The carrier contends its position with regard to tasks which are common to both Brotherhood of Railway Carmen and Brotherhood of Railroad Trainmen has not been altered by any arrangements with the Brotherhood of Railway Carmen. Under the Carmen's Classification of Work 154, which does not mention coupling of air hose, the carmen's known duties are listed. Under the clause in Carmen's Rule 154 providing that "all other work generally recognized as carmen's work" the carrier contends that it has never, by written agreement, oral agreement, or past practice, recognized the coupling functions in making air tests as being within the exclusive province of the carmen's craft.

Classification of Work Rule 154, does not classify coupling or uncoupling air hose as carman's work, but it is generally known, understood and recognized that carmen, trainmen, yardmen and others perform those duties under various circumstances and conditions. Therefore, it is evident no skill is required to perform those duties and this work is not mechanic's work within the intent and meaning of Rule 154 of the current agreement, or "work generally recognized as carmen's work" as referred to in Rule 154.

The history of coupling and uncoupling hose is that this function has not been exclusively assigned to, or performed by any particular craft. Referee George Cheney in an Arbitration Award, between the Brotherhood of Railroad Trainmen and certain participating carriers of the Eastern, Western and Southeastern Railroads, released August 1, 1951, in connection with the coupling and uncoupling hose question, stated:

> "The evolutionary circumstances just detailed, are persuasive that from the inauguration of the air brake systems to modern times, trainmen, yardmen and carmen have all performed the Coupling Function. From the perspective of interpretations placed upon the restrictive rules themselves by the parties, such rules do not establish hard and fast exclusive craft boundaries as between the Brotherhood and Railroad Trainmen, and the Brotherhood of Railway Carmen, allocating the performance of the Coupling Function solely to carmen. On the contrary, present rules portray examples of the overlapping of craft lines, and illustrations of tasks which are common

to the crafts of both the Brotherhood of Railway Carmen and the Brotherhood of Railroad Trainmen. It should also be observed that this conclusion is not original with the present referee. The Federal District Court, in the case of Shipley versus Pittsburgh and Lake Erie Railroad Company, 83 F. Supp. 722, previously reached an identical conclusion, from which significantly no appeal was taken."

The contention of the employes that this work is carmen's work on the basis it has been performed by carmen is of no significance or importance, in view of the agreement rules in effect between the parties and this board has repeatedly held that past practice does not change an agreement rule. The contention of the employes that this is carman's work on the basis that it has been performed by carmen, if sustained, would actually distort the real intent and meaning of the phrase "and all other work generally recognized as carmen's work" or change the language to read "and all other work performed by carmen".

The work performed by the trainmen in the Corn Products Yard was not inspection or repairs to the cars but was work which the First Division and this Division has held as being work incidental to the work of train service employes.

CONCLUSION

The Carrier has demonstrated hereinbefore that —

1. Coupling of air hoses and making air tests is not exclusive work of carmen.

2. Carmen's Rule 154 is not violated when trainmen couple air hose and make air tests.

3. The claim in the instant dispute is wholly without merit and should be denied in its entirety.

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 employe 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 Corn Products Refining Company owns and operates a train yard at Argo, Illinois, which is served by several railroads, including the Carrier. The Carrier's switch engine crew places cars on the receiving tracks of the Corn Products yard. All switching within the plant is performed by a Corn Products locomotive which also places the cars on the outbound tracks. The Carrier's switch engine crew then picks the cars up and brings them to the Carrier's Argo train yard, a distance of about one-half mile, where the usual inspections and necessary repairs are made by the Carrier's carmen.

On certain specified days between March 28, 1958, and July 19, 1958, switchmen belonging to the Carrier's engine crew coupled the air hoses and

made air tests on cars which has been stored at the outbound tracks in the Corn Products yard so that they could be moved to the Carrier's Argo yard.

The Claimants, S. Consonza, J. DiGangi, J. Liber, and C. Santoria, who are employed as carmen at the Carrier's Argo yard filed the instant grievance in which they contended that the Carrier violated the applicable labor agreement when it assigned the above described coupling of air hoses and making of air tests to switchmen. They requested compensation in the amount of four hours each at the pro rata rate for each alleged violation. The Carrier denied the grievance.

We are asked to decide in this case whether the coupling of air hoses and the making of air tests in the above described instances involved work exclusively belonging to the carmen's craft. For the reasons hereinafter stated, we are of the opinion that the answer is in the negative.

1. Substantially the same legal question was submitted to us for adjudication by the Carrier and the Organization in Docket 3862. In that case, the same labor agreement was also involved. We denied the carmen's claim in our Award 4145 primarily on the ground that "in general, in the absence of specific agreement, the work of coupling and uncoupling air hose and testing air has been held exclusively reserved to carmen only when performed as an incident to their regular maintenance and repair duties and inspection incident thereto." We noted that our ruling was in accord with numerous other Awards of this Board as well as with the detailed Award of Referee Geo. Cheney, dated August 1, 1951, and the decision of the U. S. District Court, Western District of Pennsylvania, in the matter of Shipley v. Pittsburgh & L. E. R. Co., 83 F. Supp. 722 (1949). We have carefully re-examined our prior Award but have found nothing in the record which would justify a different ruling. Accordingly, we adhere to said Award. See: Award 3991 of the Second Division.

Applying the above principle to this case, we have reached the following conclusions:

Rule 154 of the labor agreement contains a specific description of various tasks coming under the jurisdiction of the carmen's craft. However, coupling of air hoses or making air tests incidental to car movements is not specifically listed: The Rule also provides that all other work not explicitly enumerated therein but generally recognized as carmen's work belongs to their craft. The record reveals that carmen have coupled air hoses and made air tests at the Corn Products yard. Yet this fact is of no decisive significance unless they have performed such work exclusively. See: Awards 1110 and 4259 of the Second Division. The available evidence does not permit such a finding. On the contrary, the evidence on the record considered as a whole convincingly demonstrates that carmen as well as trainmen have traditionally performed said work. Hence, Rule 154 does not support the instant claim.

2. The Claimants also rely on a bulletin posted by the Carrier on December 20, 1940, in which bids were invited for a job consisting of "inspecting and repairing cars in Argo Yard * * * and Corn Products Refg. Co." The bulletin does not mention coupling of air hoses or making air tests incidental to train movements and we do not construe it as including such work. This conclusion is corroborated by the uncontroverted fact that carmen performed no coupling functions at the Corn Products yard until September, 1943, or for a period of about 2¾ years after the posting of the bulletin.

Furthermore, the Claimants have referred us to several instances in which the Carrier allegedly satisfied claims similar to the one here in dispute. The

record indicates that the factual situations underlying the previous settlements are distinguishable from the one before us. In addition, the Carrier has called our attention to certain instances in which it has denied similar claims. Thus, the available evidence is inconclusive to make a finding to the effect that the parties entered into a specific understanding outside of the labor agreement in which they agreed that the work here in dispute exclusively belongs to carmen.

In summary, we are of the opinion that, on the basis of the facts underlying this case, the Carrier did not violate the labor or any other agreement between it and the Organization.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4286

The majority states "We are asked to decide in this case whether the coupling of air hoses and the making of air tests in the above-described instances involved work exclusively belonging to the carmen's craft." The question asked was whether the work performed in certain described instances on specific dates was wrongfully transferred from carmen to switchmen.

The majority ignores the carrier's admission that the work at Corn Products Company (Argo Yard) was carmen's work and would have been performed by carmen as usual if they had not been doing other work at Argo Yard. The record reveals that in the past when the carrier assigned other than carmen to do this type of work the carrier admitted that it was wrong in doing so and returned the work to the carmen and compensated them for assigning their work to others. The record further shows conclusively that the factual situations underlying previous settlements are not distinguishable from the facts underlying the present case.

Under the circumstances of this case and the available evidence the decision of the majority should have been in the affirmative and the carrier should have been ordered to live up to the previous settlements made in regard to this type of work.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink