Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10021
SECOND DIVISION Docket No. 9897-T
2-B&O-CM-'84

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

No. 1. That Carrier violated the terms of the controlling Agreement when on the date of May 21, 1981, they allowed trainmen to perform carmen's work of coupling air hose and testing air brakes, while, in fact, carmen were employed and on duty Bay View Yard Baltimore, Maryland, in violation of the provisions of Rule 144 1/2 of the Controlling Agreement.

No. 2. That Carrier is in violation of Rule 33 of the controlling Agreement with regard to the handling of this claim on the property, failure to give reason for denial of this claim.

No. 3. That accordingly, Carrier be ordered to compensate Claimants for all time lost account these violations, Rule 144 1/2 and Rule 33; four (4) hours pay at the pro rata rate, each Claimant.

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.

POSITION OF EMPLOYES:

"It is the position of the Employes that Carrier has violated the contractual rights of Claimants, in the instant case, causing them to be monetarily injured to the extent of four (4) hours pay at the pro rata rate, when on the date of May 21, 1981, on the 11:00 P.M. to 7:00 A.M. shift commencing on the date of May 21, 1981 and existing until the date of May 22, 1981, 7:00 A.M., Carrier allowed trainmen to perform carmens' work of coupling air hose and testing air brakes, while in fact Carmen were on duty and available to perform such work.

"While carmen on duty at Bay view were engaged, as per instructed by Yardmaster, G. Sheers, in cutting off engine # 4091 from trailer train arriving Bay View at 3:26 A.M., to be sent to Riverside roundhouse, and subsequently engine # 4091 departed Bay View for Riverside, at 3:32 A.M., Carrier allowed trainmen to make # 11 track solid, a track that had not prviously been worked by carmen, additionally, allowed trainmen to couple air hose and test air brake on this train, after which such train departed Bay View for Gray's Yard.

"As per the time indicated above, and certainly not disputed by Carrier, that Carmen were engaged in cutting off engine # 4091 from trailer train which arrived at 3:26 A.M., such engine departing Bay View for Riverside at 3:32 A.M., it is certainly apparent that Carmen were available and on duty to perform the work Carrier allowed trainmen to perform. Further, we believe this work is contractually provided to be specifically carmens work, when in fact, carmen are on duty. In support of our position we refer to Rule 144 1/2 of the controlling Agreement, paragraphs (a) and (c).

(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 inspection 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.'

(c) 'If as of July 1, 1974 a railroad had carmen assigned to a shift at a departure yard, coach yard or passenger terminal from which trains depart, who performed the work set forth in this rule, it may not discontinue the performance of such work by carmen on that shift and have employes other than carmen perform such work (and must restore the performance of such work by carmen if discontinued in the interim), unless there is not a sufficient amount of such work to justify employing a carman.' (Underscoring added.)"

In addition to charging violation of Rule 144 1/2 the Brotherhood also contends the claim to be supported by Rule 33 in that Carrier allegedly did not give in writing reasons for denial of the claim.

POSITION OF CARRIER:

The Carrier's statement of the facts does not differ essentially from the Brotherhood except in emphasis on the fact that the cars moved within terminal limits. The Carrier's statement describes the matter as follows:

"During the third shift on May 22, 1981, a cut of cars was located on No. 11 track at Carrier's Bay View Yard. At the direction of the Yardmaster, the train crew made the necessary hose couplings and air tests after which the cars moved within terminal limits to Gray's yard. Carrier's Bay View Yard and Gray's Yard are both located within the Baltimore, Maryland terminal. It should also be noted that the work involved herein has been performed by train crews, as well as carmen, at all terminals on Carrier's property for many years. Nonetheless, the Organization took exception to the train crew's performance of this work even though the cars involved moved wholly within terminal limits on May 22, 1981."

Inasmuch as this is a jurisdictional issue between trainmen and carmen the United Transportation Union was notified of the claim and given an opportunity to express its position. That Union replied that it did not wish to intervene.

The allegation that Carrier violated Rule 33 refers to Mr. Borgman's letter of June 12, 1981 in which he denied the claim as follows:

"Be advised Rule 144 1/2 was not violated. There is no merit in this claim and it is denied."

We do not find the denial to be without reason as required by Rule 33. Although tersely stated the reason given was that Rule 144 1/2 was not violated. This is reason enough to meet requirements of the rule and this point of view has been upheld in numerous past awards. For example, Second Division Award No. 4556 involved a similar rule in a like situation and the award stated:

"Second Division Award No. 4556 (Williams):

"The employes additionally ask that their claim be allowed in its entirety because of a violation of Article V of the August 21, 1954, Agreement; they allege that this violation was caused by three Carrier officials failing to state the reasons for not allowing the claims. Exhibits show that each of the officials said essentially the following: 'The claim is declined due to it not being supported by any scheduled rule.' Numerous prior awards of all Divisions of this Board have determined that the requirements of Article V are met by such language as we have quoted above, therefore, we must deny the employes' request for allowing the claim on the procedural point presented and we therefore proceed to a determination of the claim on its merits."

Award No. 7536 also involved this same kind of a rule. In that case the award stated:

> "Rule 37...has already been interpreted on this property by this Division in its Award 6387. The same issue, raised by the Employes here was raised therein, to wit, that the phrase 'disallowing the claim' was not, as here, contained in the letter giving the reasons for disallowing an appeal made by the Employees.' Award 6387, as did Third Division Awards 9615 and 10638, held 'that Rules such as Rule 37 above do not require specific language to accomplish disallowance of a claim. We likewise so hold here."

Jurisdictional disputes over coupling of air hoses and testing air brakes have a long history on this carrier as well as on carriers throughout the country. Carmen have never had exclusive jurisdiction over this work and it was intended that the dispute would be settled by the National Agreement of September 25, 1964. Article V of the National Agreement was adopted as Rule 144 1/2 by this Carrier and the Carmen's Brotherhood. The language is identical in both agreements.

The negotiating history leading up to Rule 144 1/2 arose out of the jurisdictional differences between carmen and trainmen with carmen contending for the exclusive right to perform all hose coupling and air testing work. It was this objective that led to the Carmen's Section 6 Notice of October 15, 1962 which read:

> "The coupling and uncoupling of air, steam and signal hose testing air brakes and appurtenances on trains or cuts of cars in yards and terminals, shall be Carmen's work."

The resultant dispute led to the creation of Emergency Board No. 160 created by the President of the United States under the provisions of Section 10 of the Railway Labor Act, to investigate the dispute and submit recommendations for settlement of the issue. The Board's recommendations struck a compromise intended to provide a basis for settlement by taking into account the Carmen's claim for exclusive jurisdiction and the insistence by Carriers that coupling hoses is a simple operation to be done by all crafts. The Board's comments on the issue and its recommendations as set forth in Second Division Award No. 5759 follow:

"RECOMMENDATION

"We recommend the adoption of the following rule:

> In yards or terminals where carmen are employed and are on duty at or in the immediate vicinity of the departure tracks where road trains are made up, the inspecting and testing of air brakes and appurtenances of road trains, and the related coupling of air, signal and steam hoses incidental to such inspections, shall be performed by carmen.

"This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a 'double-over' and the first car standing in the track which the outbound train is made up."

It will be noted the Board's recommendation to carmen was limited to "departure tracks where road trains are made up". The particular language used by the Board shows intent to limit carmen's exclusive jurisdiction to road trains in departure yards and leave undisturbed the coupling of cuts of cars in yards to either carmen or yardmen, as in the past.

The Carmen's Brotherhood declined to accept the Board's recommendations on the grounds the Board's use of "road" before "trains" was too restrictive. In the negotiations that followed the language was modified by deletion of the word "road" in the resultant provisions of Article V of the National Agreement of September 25, 1964. The account of this phase of the history of the development of Article V is presented in Second Division Award No. 5759 as follows:

"ARTICLE V--COUPLING, INSPECTION AND TESTING

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.

"This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a 'double-over' and the first car standing in the track upon which the outbound train is made up."

Comparison of recommendations of Emergency Board No. 160 and the final provisions negotiated and embodied in Article V show that the original intent was not changed with elimination of the word "road" before the word "trains". Instead, the same idea was expressed in different language. Thus, Article V gives carmen exclusive jurisdiction over coupling work where they are "on duty in the departure yard, coach yard or passenger terminal from which trains depart ...". Nothing is said in Article V which indicates intent to disturb or change the long standing practice of using yard brakemen or carmen as needed to couple cuts in classification yard for intra-yard movement within yard limits whether the movement be to transfer cars for interchange, to repair tracks, to store tracks or wherever within terminal yard limits.

It should be noted also that the final language of Article V did not include the term "cuts of cars" as used in the Carmen's Section 6 notice thus further evidencing the rule was not intended to grant carmen exclusive jurisdiction over this aspect of the work but rather limit it to coupling cars for trains being prepared in departure yards for road movement.

The essence of Rule 144 1/2 in this case is that the work in question is reserved to carmen only when certain specific conditions prevail. The issue has been determined in a number of awards notably Second Division No. 5368, wherein the three specific conditions are set forth as follows:

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. The train involved departs the departure yard or terminal.

The Carrier has switching and yard operations through the Baltimore area extending from Gray's Yards at the southeastern end of the terminal to Bay View Yard at the northeastern end, all within the Baltimore Yard limits. In total, the Carrier has 8 classification yards within the Baltimore Terminal area.

In this case the Carrier instructed trainmen to make solid, couple air hoses and test brakes on a cut of cars at Bay View Yard which was later moved to Gray's Yards. The entire operation was within the terminal area. It should be noted that this same work has been performed for many years in all of the Carrier's yards by train crews as well as carmen. Although carmen acquiesced in trainmen being used for such work for many years in hundreds of prior instances since 1964 when Rule 144 1/2 was agreed to they chose to submit this claim in 1981 alleging violation in this particular case.

The facts establish that only the first of the three conditions set forth in Award No. 5368 are present in the instant case, i.e., carmen employed by the Carrier were on duty in the yard at the time trainmen were assigned to couple the hoses and test the air brakes. Recognizing that Bay View Yard is at the northeastern end of the Baltimore Terminal limits, it follows that for this to be a departure yard as referred to in the rule the train must be destined to a point north beyond terminal limits. Such was not the case; the cut of cars was destined for Gray's Yards at the southeastern end of the terminal within the terminal limits. This was an intra-terminal movement between two classification yards within yard limits, not a departure yard from the terminal as contemplated by the rule. The term "train" as used in items two and three of the criteria refers to trains ready for departure from the terminal for over-the-road movement beyond terminal yard limits, not to intra-terminal movements between classification yards. In this case it is important to distinguish that it was a "cut of cars" rather than a road train prepared and ready for departure from one of the yards for an over-the-road movement. Thus, the rule refers to "trains", not cuts of cars.

The movement in this case was essentially a switching movement in moving a cut of cars from one classification yard to another. Clearly Rule 144 1/2 was not intended to cover such movements since the first sentence of rule limits application to yards where carmen are employed and "on duty in the departure yard, coach yard or passenger terminal from which trains depart ...". The rule applies to trains not cuts of cars such as here involved and thus we find the rule was not violated. Award No. 6999 bears a close relation to the issues in this case as follows:

> "In interpreting Article V of the 1964 National Agreement this Board has adhered to the three criteria enunciated in Award 5368. The third criteria in that Award was that the train involved departs the departure yard or terminal; Carmen must meet all three criteria in order to establish a right to the work. In this case the cut of cars moved from one classification yard to another and did not depart yard or terminal. Hence Petitioner did not prove that the criteria above was met."

We also quote below from Award No. 5441 which bears especially upon switching movements within yard limits:

> "The Board is of the opinion that under the facts and circumstances herein the work performed was a switching movement within the yards. Cars taken to the interchange were for the purpose of being made up rather than departing as required by Article V. Also all the work performed was done within the Knoxville Terminal limits. It further finds that the cars were not inspected mechanically or otherwise, or that the coupling or uncoupling of air hose is exclusively the work of Carmen in yards as described herein."

The facts reviewed herein establish that coupling air hoses and testing air brakes as covered in the instant claim is not exclusively carmen's work and that all the criteria set forth in the rule reserving to carmen the right to perform such work were not met in the conditions set forth in the claim. Therefore the claim must be denied.

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 8th day of August, 1984.