

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11409
Docket No. 11082-T
88-2-85-2-199

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(The Atchison, Topeka and Sante Fe Railway Company

Dispute: Claim of Employees:

1. That under the provisions of the current working Agreement the Carrier erroneously and improperly instructed and/or allowed other than Carman to couple air hoses incidental to inspection and performing the air brake tests on numerous trains subsequent to April 27, 1983, thereby violating Rules 36, 98 and Article V of Appendix No. 7 of the September 1, 1974 Agreement, as subsequently amended.

2. That accordingly, the Carrier be ordered to additionally compensate J. F. DeAlva in the amount of ninety-six (96) hours at his pro rata rate of pay for violation on April 27, 28, 29, 30; May 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19 and 20, 1983 and to continue in like amount for each day subsequent to May 21, 1983 until such time that correction and payment have been made.

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 employees 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.

As third party in interest, the United Transportation Union was advised of the pendency of this case, but chose not to file a Submission with the Division.

Claimant is employed as a Carman by the Carrier, at its Mobest facility near Phoenix, Arizona. Beginning in 1981, Carrier abolished certain Car Inspector positions, changed work schedules, and altered on-duty points for Road Switchers and Car Inspectors originally assigned to Carrier's Mobest and Glendale, Arizona facilities, which are about six miles apart. As a result of these alterations and as of April 27, 1983, Trainmen began to perform inspecting, testing, and coupling on the 6:30 P.M. Road Switcher at Mobest; prior to April 27, 1983, this work was performed by Carmen at Mobest. The Organization thereafter filed a Claim on Claimant's behalf, challenging Carrier's use of Trainmen to perform the work and seeking compensation for Claimant.

The Organization contends that it is undisputed that the work at issue specifically and unambiguously belongs to the Carmen's craft under Rule 98 of the Agreement, the Classification of Work Rule. Moreover, Rule 36(a) of the Agreement specifies that "[n]one but mechanics or apprentices regularly employed as such shall do mechanics work per the Rules of each Craft," and train crews are not regularly employed as Carmen. The Organization also points out that until April 27, 1983, Carmen at Mobest historically have performed the disputed work, and the work generally is recognized as Carmen's work.

The Organization argues that Carrier unilaterally and arbitrarily violated the Agreement by using train crews to perform the disputed work. The Organization asserts that work falling within the scope of the Agreement cannot be assigned to persons who are not covered by the Agreement. The Organization asserts that Carmen were on duty on the dates in question, and trains left the yard after receiving air brake tests from Trainmen; Claimant was damaged by Carrier's action and is contractually entitled to the additional compensation set forth in the instant Claim. The Organization therefore argues that the Claim should be sustained.

Carrier argues that there is no contractual provision that gives Carmen the exclusive right to perform the disputed work. Article V provides that such work will be performed by Carmen when Carmen are employed and on duty in the train yard. Carrier contends, however, that no Carmen were assigned or on duty at Mobest during the hours that the disputed work was performed by train crews. If Carrier were required to have a Carman perform the work, then it would have had to call in an off-duty Carman. Carrier points out that under Paragraph (c) of Article V, Carrier must continue to have Carmen perform such work during a shift so long as there is enough work on that shift to justify continued assignment of a Carman. Carrier argues that because of a drastic decline in business, there was little if any train yard work during certain hours; Carrier therefore reduced the Car Inspector force from a three-shift to a two-shift operation and changed shift schedules. Carrier contends that such reductions in force and changes of assigned hours are common; the Organization did not protest either the force reduction or the changed shift schedule. Carrier further argues that the disputed work averaged one-half hour per day, clearly insufficient to justify employing a Carman. Moreover, the force and

schedule changes took place over a nineteen-month period in response to decreases in available work and changing service needs; Carrier argues that this establishes that Carrier did not deliberately take work from the Carmen. Carrier asserts that under Paragraph (c) of Article V, it properly used Trainmen to perform the disputed work during the hours that no Carmen were assigned to work.

Carrier further argues that the qualifications of Trainmen to perform the disputed work are not at issue. Moreover, Trainmen historically have performed such work on this property. The Carrier also points out that the Organization's failure to request a joint check constitutes recognition that there is not sufficient work to have Carmen assigned for duty round-the-clock. Carrier therefore contends that the Claim should be denied.

This Board has thoroughly reviewed the record in this case, and we find that there is insufficient evidence to support the Organization's position that the Carrier violated the Agreement by assigning employees other than Carmen to perform the designated work on the dates in question. Hence, this Claim must be denied.

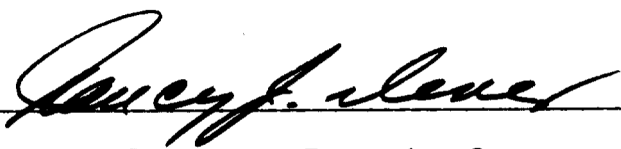
The record is clear that Trainmen have historically performed the type of work in dispute. Moreover, it is also clear that on the date in question, no Carmen were assigned or on duty at Mobest to perform the work. The Carrier has suffered a decline in business which had led to a reshuffling of their personnel. The disputed work did not justify requiring the Carrier to keep on a full-time Carman. The Carrier was within its rights to assign the work in question to other employees.

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 6th day of January 1988.