Award No. 5368
Docket No. 5232
2-SOU-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement, when on February 20, 1965, Switchmen were instructed and/or authorized to couple air hose and make brake test on Belt Delivery, Departure Yard, East St. Louis, Illinois, where there are Carmen employed and on duty.

2. That the Carrier be ordered to desist said violations and compensate Carmen O. W. Tucker, F. Robertson and A. Agne, all of East St. Louis, Illinois, for five (5) hours each at straight time rate of pay for February 20, 1965.

EMPLOYES' STATEMENT OF FACTS: Carmen O. W. Tucker, F. Robertson and A. Agne, hereinafter referred to as the Claimants, employed by the Southern Railway Company hereinafter referred to as Carrier, in Carrier's Departure Yard, East St. Louis, Illinois. Claimants were available and qualified to perform the work involved herein, i.e., the coupling of air hose and making brake test on Belt Delivery in the Departure Yard at East St. Louis, Illinois, on February 20, 1965.

On February 20, 1965, Switchmen on Engine No. 2169 were instructed and/or authorized to couple air hose and make brake test on Belt Delivery consisting of thirty-eight (38) cars in the Departure Yard, East St. Louis, Illinois, where Carmen are employed and on duty. The Belt Delivery is made up in the Departure Yard, at East St. Louis, Illinois, seven (7) days out of each week. It is required by the Carrier that the air hose be coupled and brake test be made before said train and/or cars proceed to the Main Line in order to deliver and pick-up cars within the Yard Limits of East St. Louis, Illinois.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including the highest designated officer of the Carrier, all of whom have declined to make satisfactory adjustment.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier not having seen the Brotherhood's submission reserves the right after doing so to make reply thereto and submit any other evidence necessary for the protection of its interests.

In event this dispute is deadlocked and a referee is selected or appointed to render an award Carrier desires to appear before the Board with the referee present.

Oral hearing is requested.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carrier 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 were given due notice of hearing thereon.

This dispute requires interpretation of Article V of the January 27, 1965 Agreement, which is:

"ARTICLE V.

COUPLING, INSPECTION AND TESTING

In yards or terminals where carmen in the service of the carrier operating or servicing the trains 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 train is made up."

There being nothing ambiguous in the language of Article V, the interpretation is entirely dependent upon the factual situation involved in each independent dispute. In order to sustain a claim involving Article V, this Board must find that the following facts exist:

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. That the train involved departs the departure yard or terminal.

The burden of proving these elements is on the Organization. In the instant case, the evidence falls short of proving that the train "departed" the terminal limits. The evidence shows that Coapman Yard represents the Northern and Western limit of Carrier's line. Therefore, any departure train would necessarily have to depart in a Southerly or Easterly direction. The entire movement of the train involved in this dispute was North of Coapman Yard and was within the terminal limit. There was no departure.

The work involved was moving cars to other locations within the terminal limits and returning cars to the make-up yard by switch crews. The work did not involve train crews.

For the reasons above set out, this claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1968.

DISSENT OF LABOR MEMBERS TO AWARD NO. 5368

Article V of the January 27, 1965 Agreement reads in pertinent part:

"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 carmen."

The majority states in their findings that "* * * In order to sustain a claim involving Article V, this Board must find that the following facts exist:

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. That the train involved departs the departure yard or terminal."

There is no dispute on items 1, 2 and 3 as it was agreed that carmen were employed and on duty in the departure yard and the hose was coupled and the air tested and inspected. There is no dispute that the train departed the Coapman Yard, which was the departure yard.

The majority further states that "The work involved was moving cars to other locations within the terminal limits and returning cars to the make-up yard by switch crews. The work did not involve train crews."

There is nothing whatsoever in Article V that could be construed as requiring such trains to depart from yard limits. There is no provision in Article V requiring any certain class of employes to operate such trains. There is no dispute that the train involved departed from the Southern Railroad's property when delivering interchange cars to the Norfolk & Western Railroad. There is no dispute that the train involved departed the Southern Railroad Yards and entered the main line of the New York Central Railroad going north out of East St. Louis and traveled a considerable distance to deliver interchange cars to the New York Central Railroad Yards. These are undisputable facts verified in the Carrier's submission. The train involved not only departed the yard limits of the Southern Railroad, it departed from the Southern Railroad; facts which the majority so conveniently overlooked in arriving at their findings.

Article VII of the January 27, 1965 Agreement reads in pertinent part:

> "* * * This agreement shall be construed as a separate agreement by and on behalf of each of said carriers and its employes represented by each of the organizations signatory hereto."

The majority ignored the probative facts in this case, making the award palpably erroneous. We dissent.

O. L. Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger

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