

Award No. 5441
Docket No. 5284
2-SOU-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement, when on April 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, and 24, 1965 Switchmen were instructed and/or authorized to couple air hose and make brake test on the L&N transfer, Departure Yard (City Yard), Knoxville, Tennessee, where Carmen are employed and on duty.

2. That the Carrier be ordered to desist said violations and compensate the following Carmen eight (8) hours at the rate of time and one-half pay; Carmen Carl Thurmer for April 8, 1965, Carman A. H. Layman for April 9, 1965, Carman R. W. Gentry for April 10, 1965, Carman John Allen, Jr. for April 12 and 19, 1965, Carman Robert H. Bedwell for April 14 and 18, 1965, Carman Jack Blackburn for April 15, 1965, Carman R. D. Harkleroad for April 16, 1965, Carman K. E. Mingle for April 17, 1965 and Carman J. A. Cox, Jr. for April 24, 1965.

EMPLOYEES' STATEMENT OF FACTS: Carmen Carl Thurmer, A. H. Layman, R. W. Gentry, John Allen, Jr., Robert H. Bedwell, Jack Blackburn, D. Harkleroad, K. E. Mingle and J. A. Cox, Jr., hereinafter referred to as Claimants, are employed by the Southern Railway Company, Knoxville, Tennessee, hereinafter referred to as the Carrier, in the Departure Yard, City Yard, Knoxville, Tennessee. Claimants were available and qualified to perform work involved herein, i.e., the coupling of air hose and the testing of brakes on the L&N transfer in the Departure Yard, City Yard, Knoxville, Tennessee, on April 8, 9, 10, 12, 14, 15, 16, 17, 18, 19 and 24, 1965.

On April 8, 1965, Switchmen were instructed and/or authorized to couple air hose and make the brake test on 37 cars; April 9, 1965, 101 cars; April 10, 1965, 106 cars; April 12, 1965, 37 cars; April 14, 1965, 54 cars; April 15, 1965, 99 cars; April 16, 1965, 56 cars; April 17, 1965, 102 cars; April 18, 1965,

ceded that there was a distinct difference between coupling and uncoupling of air, steam and signal hoses and testing air brakes and appurtenances on "trains" or "cuts of cars in yards and terminals." In fact the Brotherhood by its proposal conceded that "cuts of cars in yards and terminals" do not constitute "trains." It cannot now consistently argue otherwise.

(d) Carrier does not operate "trains" wholly within yards or terminals, nor does Carrier operate transfer or yard trains. The only "trains" Carrier operates are those manned by road crews. As evidenced in the record, the cuts of cars assembled by yard diesel electric locomotive units within Knoxville yard and terminal were moved wholly within Knoxville yard and terminal by yard diesel electric locomotive units manned by yard crews and by no stretch of one's imagination constituted "trains" within the intent and meaning of this word as used in Article V of the agreement of January 27, 1965.

(e) All claimants were off duty, except one, observing one of their two assigned rest days that week. The other claimant worked on the day on which pay is claimed but had gone off duty when the claimed work was performed. None of the claimants was subject to call under any provision contained within the four corners of the agreement here controlling except in emergency and there was no emergency. In fact the Brotherhood as the proponent having alleged that claimants were available has the burden of establishing that to be a fact, if it be a fact. The Brotherhood has not done so. It has done nothing more than make the allegation without offering any proof. Claimants definitely have no contract right to be paid the exaction, penalty or windfall here demanded by the Brotherhood on their behalf. Not only the Adjustment Board but the courts as well have declined to award penalties, damages or windfalls even in situations where there has been shown to be a contract violation, and there definitely was none in any of the instant cases.

Claim being wholly without basis and unsupported by the agreement here controlling the Board is left with no alternative but to make a denial award.

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.

(Exhibits not reproduced.)

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 were given due notice of hearing thereon.

The claimants, nine in number, were carmen on duty in the City Yard and Sevier Yard, Knoxville, Tenn. That on various dates in April 1965, Switchmen were authorized to couple and uncouple air hose and test brakes prior to the departure of the cars from the yards to the L&N interchange approximately two miles west of downtown Knoxville, but within the Knoxville Terminal limits, by a yard engine.

The claim is on behalf of the Carmen who seek eight (8) hours' pay at the time and one half rate, for the failure to assign the work to them, and thus violated the agreement.

The Carrier contended that only cuts of cars were involved and not trains, within the intent and meaning of Article V, of the January 27, 1965 Agreement. No brake tests were made other than by having the yard engineer apply and release the brakes, while members of the yard crew determined by observation whether the brakes applied and released. The movements were wholly within adjacent yards. The claimants state in the record on June 19, 1965, the Local Chairman responded by letter as follows " * * * The L&N interchange is in fact the City Yard and very much an integral part. City Yard as all interchange trains are pulled, tested in a part of this yard" * * *. The history on the property has not indicated that this work was exclusively done by carmen. In a letter in the record by the Local Chairman dated May 1, 1965, " * * * Under the new agreement the Carmen have not yet been permitted to couple air hose, inspect and give brake test to the transfer that leaves City Yard each day. This work is still performed by switchmen."

The claimants contended Article V applied to the present situation:

"Article V. 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."

That the facts in this dispute disclose that the trains departed the yard to reach its destination, and as such it was clearly a move outside the departure yard. The work was performed by other than Carmen while they were on duty, thus Article V was violated.

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.

AWARD

Claim denied.

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

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 3rd day of June, 1968.