

Award No. 5461
Docket No. 5154
2-GM&O-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current agreement, the Carrier improperly assigned other than Carmen to give air brake inspection and test and couple hose in connection with same beginning November 1, 1964 at Kansas City, Missouri on the second shift at Lydia Avenue Yard, and on the first second and third shifts at Twelfth Street Yard.

2. That accordingly, the Carrier be ordered to desist in this practice.

3. That accordingly, the Carrier be ordered to make the Carmen whole by additionally compensating them in the amount and manner following:

(a) For the work performed on the first shift at Twelfth Street Yard, eight (8) hours at the time and one-half rate for each day. Carmen J. D. Hendren, H. D. Lock, F. L. Stewart, E. J. Meditz and A. R. Riley are the Claimants and are to be rotated for each day in the order listed beginning November 1, 1964 and continuing until the violation is corrected.

(b) For work performed on the second shift at Lydia Avenue Yard, four (4) hours at the straight time rate for each day. Carmen J. J. Zager, L. Childers, N. P. Bruscato, C. C. Parmely, J. H. Wilson, J. J. Ferraro, H. H. Ulrey and Frank Montesano are the Claimants and are to be rotated for each day in the order listed beginning November 1, 1964 and continuing until the violation is corrected.

The claimants are not only regularly employed but, in addition to working their regular assignments, are working a great deal of overtime. The work involved, that of Switchmen coupling air hose and making air tests, is a part of their duties and responsibilities for which they are paid. They make no claim that they are performing duties of Carmen.

Certainly, General Chairman Wheeler did not meet the criteria required by Article V of the September 25, 1964 Agreement, nor did he comply with his General President's instructions (see Carrier's Exhibit C).

CONCLUSION

This Board has held in countless Awards that the burden of proof rests with the Petitioner. Certainly the Employes have not submitted a scintilla of evidence in the instant case that the coupling of air and testing of air brakes on these yard deliveries at Kansas City was in violation of Article V of the September 25, 1964 Agreement. On the other hand, Carrier has furnished your Board with a full outline of the handling of these deliveries at Kansas City and has shown that in the instances as outlined where Carmen were employed and on duty they were not working in the departure yard from which these connecting line and industry deliveries depart. Claimants were performing Carmen's work at other parts of the yard. Under these circumstances, Carrier submits that Article V of the September 25, 1964 Agreement does not restrict its right to have Switchmen couple air hose and make air tests.

Carrier has shown that the Claimants are regularly employed and working their regular assignments, in addition to a great deal of overtime, and certainly no additional windfall payments are due them. Carrier reiterates that the Employes have not established the facts; that they have not met the conditions requisite to the work of coupling air hose and testing of air to become exclusively Carmen's work. Article V of the September 25, 1964 Agreement, which became effective November 1, 1964, very clearly outlines the conditions which must first be met before Carmen have the exclusive right to perform such work. Carrier has shown without question of doubt that under the circumstances existing at Kansas City there was no violation of the Agreement by reason of Switchmen performing this work and requests that your Board deny this claim.

(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 claims here are based upon an alleged violation by Carrier of the National Shop Crafts Agreement of September 25, 1964, and, more particularly Article V thereof, which reads:

"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."

The Board in Second Division Award No. 5368 held:

"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 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.

Here the material facts are that carmen employed by carrier were on duty in the 12th Street Yard on all three shifts, seven days a week, and at Lydia Yard on the second shift only, seven days a week. There is no dispute that these yards are approximately three miles apart.

Deliveries of cars from the Lydia Avenue and 12th Street Yards were made to some fifteen different railroads at Kansas City, including switching lines, and an average of nine connecting lines and industry deliveries are usually handled in each twenty-four hour period. It is, therefore clear that the yards here involved here, in fact, departure yards from which trains departed for the purpose of making interchange deliveries to other carriers or to consignees located outside the limits of those yards.

The factual basis of the claim is that employes other than carmen were required to perform the work of inspecting and testing air brakes, and the coupling of air hose incidental thereto, on trains departing the yards here involved from and after November 1, 1964.

The facts in this case satisfy the Board's criteria set out in Award No. 5368 for sustaining a claim under an application of Article V of the September 25, 1964 National Agreement.

Accordingly, the Board finds the Agreement was violated, as alleged, and that the claim, therefore, must be sustained.

AWARD

Claim sustained.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1968.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 5461

The facts herein do not support the sustaining of this claim for the following reasons:

- (1) The cars had been previously inspected by carmen.
- (2) Carmen were not assigned to that part of the yard where switch crews pick up cars for local delivery.
- (3) Carmen were assigned to the departure tracks preparing outbound trains as per Article V.
- (4) Switch crew members did not make mechanical inspection and testing as is clearly contemplated by Article V.
- (5) The work performed by the switch crews was incidental to the delivery of the cars and involved only making observation of brake application and release for operational purposes; historically such work has been performed by switchmen.

Proper consideration has not been given to the evidence of record nor to the many prior awards of this Board denying similar and identical claims thereby causing an erroneous conclusion in the instant claim and for these reasons Carrier Members dissent.

P. R. Humphreys
H. K. Hagerman
W. R. Harris
H. F. M. Braidwood
F. P. Butler