



Award No. 5537

Docket No. 5383

2-CB&Q-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current agreement, the Carrier improperly assigned other than Carmen to perform air brake inspection and testing of air brakes on trains departing the Sheridan, Wyoming Departure Yard from December 2, 1965 to January 2, 1966 inclusive.

2. That accordingly the Carrier be ordered to compensate the following furloughed carmen the number of four-hour calls listed following each name:

C. O. Bilyue	Ten (10) four-hour-calls.
E. L. King	Thirty (30) four-hour calls.
J. E. Myhre	Thirty (30) four-hour calls.
O. P. Sullivan	Thirty (30) four-hour calls.
S. Westika	Thirty (30) four-hour calls.
R. Long	Thirty (30) four-hour calls.
L. Rodgers	Twenty-nine (29) four-hour-calls.

EMPLOYEES' STATEMENT OF FACTS: At Sheridan, Wyoming, the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Carrier, employed three shifts of car inspectors, seven days each week, first shift 8:00 A. M. to 4:00 P. M., second shift 4:00 P. M. to 12:00 Midnight and third shift 12:00 Midnight to 8:00 A. M.

Prior to December 1, 1965 there were two car inspectors assigned to each shift. The two car inspectors performed all the work required by the Carrier which included inspecting and testing air brakes and coupling air hose on all trains departing the Sheridan departure yard.

Effective December 1, 1965 the Carrier abolished four (4) car inspectors positions thereby leaving only one car inspector on each shift, which resulted in the train crews being assigned the work of inspecting and testing air

3. Many of the 189 calls claimed by the Organization are invalid, because

(a) A single two hour and forty minute call would have provided carmen for several of the train departures, each of which were separately claimed for.

(b) The claims based on the departure of train Nos. 42 and 43 are invalid since no carmen was on duty at the passenger terminal at the time these trains departed. Rather they were on duty only in the freight yard.

For the reasons indicated herein, this claim must be denied by the Board.

(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.

Petitioner contends that Carrier violated the National Shop Crafts Agreement of September 25, 1964, particularly Article V thereof, when other than carmen inspected and made air brake tests on freight and passenger trains departing from Sheridan, Wyoming from December 2, 1965 through January 2, 1966. Claimants are furloughed carmen who were available for call to perform the work involved in this dispute.

Article V of the September 25, 1964 Agreement provides 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."

The record reveals that trainmen, inspected, tested air brakes and appurtenances, on all freight trains departing from Sheridan, Wyoming during the

period in dispute even though carmen were on duty at the departure yard on a continuous basis.

Petitioner asserts that a carman was also assigned to the passenger terminal at Sheridan when passenger trains Nos. 42 and 43 departed each day, which allegation is categorically denied by Carrier. Mere assertions are not proof, and Petitioner has failed to establish through competent evidence that a carman was on duty at Carrier's passenger terminal between December 2, 1965 and January 2, 1966 when trains Nos. 42 and 43 departed each day.

Recent Awards of this Division have arisen out of similar disputes and certain criteria have been established for determining the applicability of Article V of said National Agreement. (Award 5368) As to freight trains departing from Carrier's Sheridan yard, the record discloses that carmen were on duty; that trains were tested, inspected, or coupled in said departure yard; and that the train involved departed from the Carrier's departure yard. Consequently, we find that the factual basis for the instant claim meets the requisite criteria set forth in Award No. 5368.

Petitioner urges that seven named claimants are entitled to compensation representing an aggregate of 189 calls during the period in dispute. As Petitioner has failed to establish that a carman was on duty at Carrier's passenger terminal when trains Nos. 42 and 43 departed each day, Article V of the September 25, 1964 National Agreement is inapplicable to inspection and brake tests on said passenger trains. Thus, the aggregate number of calls must be reduced from 189 to 125 to reflect this finding.

Carrier also avers that a number of calls which occurred within single two-hour and forty minute periods should be eliminated because one furloughed carman could have performed all of the work required during two or more calls within such single two-hour and forty minute periods. Petitioner urges that each call reflects a violation of Article V of the National Agreement, and that Carrier did not raise this issue while the dispute was considered on the property. We find persuasive Petitioner's contention that the issue was not considered on the property, and therefore, is not properly before us for consideration.

In view of the foregoing, we find that Carrier violated Article V of the National Agreement dated September 25, 1964, and that the named Claimants, who are furloughed carmen should be compensated collectively for 125 four hour calls. The proportionate share of each shall accurately reflect the ratio set forth in Paragraph 2 of the Statement of Claim.

AWARD

Claim is sustained as modified by the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1968.

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