



Award No. 5671

Docket No. 5484

2-SOU-CM-'69

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. 21, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement, when on February 6 and 11, 1966, Switchmen were instructed and/or authorized to couple air hose and make brake test on K and A Belt, Departure Yard (John Sevier), Knoxville, Tennessee, where Carmen are employed and on duty.

2. That the Carrier be ordered to desist said violations and compensate Carman E. F. Proctor, five (5) hours' pay at time and one-half rate for February 6, 1966, and also Carman Billy Berrier, five (5) hours' pay at time and one-half rate for February 11, 1966.

EMPLOYES' STATEMENT OF FACT: A typographical error has been made in Employes notification letter dated June 8, 1967, in part 2 of our claim, as evidenced by caption on notification letter dated June 8, 1967.

Part 2 of our Claim should have read:

2. That the Carrier be ordered to desist said violations and compensate Carman E. F. Proctor five (5) hours pay at time and one-half rate for February 6, 1966, and also Carman Billy Berrier five (5) hours at time and one-half rate for February 11, 1966.

Carmen E. F. Proctor and Billy Berrier, Knoxville, Tennessee, hereinafter referred to as the Claimants, employed by the Southern Railway Company, Knoxville, Tennessee, hereinafter referred to as the Carrier, in the Departure Yard (John Sevier), Knoxville, Tennessee. Claimants were available and qualified to perform the work here involved, i.e., the coupling of air hose and inspection and testing of brakes on the K and A Belt in the John Sevier Departure Yard, Knoxville, Tennessee on February 6 and 11, 1966.

On February 6 and 11, 1966, Switchmen were instructed and/or authorized to couple air hose, inspect and test the brakes on the K and A Belt in the John Sevier Departure Yard, Knoxville, Tennessee, where Carmen are

demonstrates the absurdness of the claims and the unsoundness of the Brotherhood's position.

Claim being barred, the Board is left with no alternative but to dismiss it for want of jurisdiction.

(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 improperly assigned switchmen to inspect, couple hose and make brake tests on Carrier's K and A Belt train prior to departure from its Sevier Yard, Knoxville, Tennessee on February 6 and 11, 1966. It is alleged that the disputed work belongs exclusively to Carmen under the provision of Article V of the January 27, 1965 Agreement, which in part reads as follows:

"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."

In the first instance, Carrier avers that the claim submitted to the Division is not the same claim presented and progressed on the property by Petitioner, and that said claim must be dismissed as it was not handled in accordance with Section 3 First (i) of the Railway Labor Act, as amended.

It is apparent that the original claim through inadvertance was expanded to include an additional claim on behalf of E. F. Proctor which was not alleged or considered while the dispute was being progressed on the property. Such additional claim must be dismissed, but the original claim on the property will be considered as the erroneous claim can be excised readily therefrom.

As to the merits of the dispute, the record reveals the the train movements involved on the dates of claim were wholly within the terminal limits at Knoxville, Tennessee, and that Carrier's Sevier Yard, where cars were assembled, does not constitute a departure yard from which said trains departed outside the limits of the terminal. In view of the foregoing, we find that Petitioner has failed to established through probative evidence that the trains tested, inspected or coupled actually departed from a departure yard

or terminal. Therefore, we find persuasive if not controlling precedent in our earlier Awards No. 5368 and 5441. The instant claim must 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 18th day of April 1969.