Award No. 5676
Docket No. 5550
2-TRRAofStL-CM-'69

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. 25, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

DISPUTE: CLAIM OF EMPLOYES:

1. That the Terminal Railroad Association of St. Louis violated Article V of the Agreement of September 25, 1964, when other than carmen inspected, coupled hose and made brake test on train leaving the Terminal Railroad Association of St. Louis, 11th Street departure yard, about 4:30 A. M., June 13, 1966.

2. That accordingly, the Terminal Railroad Association of St. Louis compensate Car Inspector R. L. McIntire in amount of four hour (4') call for June 13, 1966.

EMPLOYES' STATEMENT OF FACTS: At St. Louis, Missouri, the Terminal Railroad Association of St. Louis, hereinafter referred to as the Carrier, has what is known as the 11th Street Yard, from which trains depart, and on June 13, 1966, about 4:30 A. M., switch foreman and helper coupled hose, made brake test and inspected four cars: 31745, ART-R, 3521 NATX-B, 27887 IC-B, and 17991 MP-B. After this mechanical inspection, which is required by the Carrier under their rules and under the provisions of the Power Brake Law, by other than Carmen, Engines 1239 and 1240 were placed on these cars, together with caboose and this transfer train then departed for Breman Yard, St. Louis, Missouri. This mechanical inspection was made by other than Carmen in the 11th Street Yard where Carmen were on duty.

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

The Agreement of April 1, 1945, as subsequently amended, particularly by the Agreement of September 25, 1964, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the Carrier erred when it instructed or permitted the switch foreman and helper to

Second. The air tests conducted here were based upon an assumption that employes charged with the responsibility of maintenance and repair had checked the brakes for defects and had found none. The applicable section of the Power Brake Law of 1958 did not require the tests in question to be made for the purpose of locating particular defects, but simply for the purpose of ascertaining whether the brakes were in operating order. Such a test did not require the use of tools or instruments; it involved no more than visual inspection.

The work required of Claimants, being operational in nature, did not invade the exclusive functions of maintenance or repair employes (Second Division Award 3593).

Third. Rule 18 prohibits bleeding cars and chaining up or unchaining cars in specified situations and pays a differential to yardmen for coupling or uncoupling air, steam and signal hose; but, nothing in this rule either authorizes or forbids the work under claim."

A copy of this Award is attached as Carrier's Exhibit F.

The Board's attention is also directed to its Award No. 5154 — Transport Workers Union of America, Railroad Division, AFL-CIO v. The Pittsburgh and Lake Erie Railroad Company and The Lake Erie and Eastern Railroad Company — from which the following is an excerpt:

"A trainman in connection with the movement of their own train cars can perform the above duty. The coupling and testing function is not the exclusive work of carmen."

Without prejudice to our position that Article V of the National Agreement of September 25, 1964, has no application to the instant dispute and that the work in dispute was not the exclusive work of carmen, the Carrier submits that there would be no basis for a monetary claim in any event as a carman was on duty and would have been used to make the hose coupling and air brake test had the switchmen not performed the work. Claimant McEntire, therefore, suffered no loss of earnings as he would not have been called even if the switchmen had not performed the work.

The Carrier has shown that Article V of the September 25, 1964 Agreement — the rule specifically relied upon by the Organization in its claim filed with this Board — has no application to the operations of this Carrier, or, more specifically, to the instant dispute; also, that there was no departure from established practices pursuant to other agreements and practices on the property which recognize that the functions of coupling of air hose and "walking the set" are not the exclusive functions of carmen; and, finally, that in any event the claimant suffered no monetary loss and, therefore, has no basis for claim.

The claim is wholly without merit, and should be denied.

(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 waived right of appearance at hearing thereon.

The facts giving rise to this dispute are not in serious disagreement between the parties. At St. Louis, Missouri, the Terminal Railroad Association of St. Louis has what is known as the 11th Street Yard. On June 13, 1966, Switch Foreman and Helper coupled hose, made brake tests and inspected four cars. These four cars were attached to other cars and moved a distance of approximately 4½ miles to Bremen Yard. The Organization contends that the work of coupling the air hose and testing the brakes on these trains prior to the time it was moved from the 11th Street Yard to Bremen Yard, all in St. Louis, Missouri, violated Article V of the Agreement.

Article V is 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.
>
> 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."

This Board has held in Awards 5461, 5553 and 5368 that in order to sustain a claim involving Article V, the Board must find the following facts to exist:

1. Carmen in the employment of the Carrier and 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. These cited awards also place the burden of proving these elements on the Organization.

In the instant case, the Organization has met its burden in showing that the Carmen in the employment of the Carrier were on duty at the 11th Street Yard. However, the Organization falls short of proving that the involved train was in a departure yard or terminal or that it departed the yard or terminal. This Board finds that the tracks of this Company consti-

tute one continuous yard. This finding is arrived at by the inspection of Rule 110 of the Company's Operating Rules effective August 1, 1953, which is:

> "A proceed signal, or a train order, does not insure an unobstructed track ahead, except through the tunnel. The tracks of this company are one continuous yard. Train movements are frequent, but often irregular. Movements must be made with train or engine under control."

In its rebuttal, the Organization challenges the fact that the tracks of this terminal are "one continuous yard" by citing a number of Operating Rules from the Operating Rules Book effective October 29, 1967, on pages 3, 7, 29, 31, 33 and 40 of said Rules Book. A close inspection of the Operating Rules cited by the Organization fails to contradict Operating Rule 110 cited by the Carrier. Therefore, this Board finds that the particular cut of cars here involved was a movement within the terminal limits from one set of Carrier tracks to another set of Carrier tracks, and did not involve a departure of any kind. Therefore, Article V has no application in this instance. See Awards 5368, 5320, 5535 and 5550.

Having so found, it is unnecessary to go into the aspects of "mechanical inspections" or whether the cars constituted a "train."

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1969.

LABOR MEMBERS' DISSENT TO AWARD NO. 5676

Award 5676 is erroneous for the same reasons as pointed out in the Labor Members' Dissent to Award 5320. Four referees (Dolnick in Award 5341), (Ritter in Award 5367), (Coburn in Award 5461), (Ives in Award 5533) rendered sustaining awards which involved claims that switch crews performed the work in the same manner as was done in Award 5320 (Johnson), a denial award. Evidently, the four referees were cognizant of the Labor Members' Dissent to that award and also considered Award 5320 when preparing Awards 5341, 5367, 5461 and 5533. By reference the Labor Members' Dissent to Award 5320 is hereby made a part of the instant dissent.

O. L. Wertz
D. S. Anderson
E. J. McDermott
R. E. Stenzinger
E. H. Wolfe

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