Award No. 5694
Docket No. 5448
2-CB&Q-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. 95, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO

(Carmen)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

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 Extra Road Train No. 235, consisting of 14 cars, departing Murray Departure Yard, North Kansas City, Missouri, March 22, 1966.

2. That accordingly, the Carrier be ordered to compensate off duty Car Inspector P. L. Dearmont a four-hour call, March 22, 1966.

EMPLOYES' STATEMENT OF FACTS: Car Inspector P. L. Dearmont, hereinafter referred to as the Claimant, is regularly assigned as such at North Kansas City, Missouri by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Carrier.

The Claimant was off duty and available for call on March 22, 1966, and was fully qualified to perform the work in dispute.

The Carrier maintains Murray Yard at North Kansas City, Missouri from which many trains depart. Carmen are employed on all three shifts, seven days each week.

The train in question was made up on March 21, 1966 and departed Murray Departure Yard on March 22, 1966. On March 21, 1966 the caboose was placed on rear of train and all air hose were coupled by car inspectors.

On March 22, 1966, just prior to departure, the air brake inspection and testing of air brakes on extra road train was performed by trainmen.

This dispute has been handled with Carrier officials up to and including the highest officer designated by the Carrier to handle such disputes, with the result that they have declined to make satisfactory adjustment.

here, has been held work not exclusively reserved to carmen. It is to be noted that the award of Referee Cheney, August 1, 1951, was adopted by this carrier and that the train crew here claimed and were allowed the 95¢ air hose coupling allowance. And see Award 3714, quoting with approval from above mentioned Award 3340; also, Awards 3339 and 3335. As long ago as May, 1940, in Award 457, this Board, without referee, pointed out the distinction between such work, when performed merely as an incident to duties of train service employes in contrast to its performance 'in connection with inspection and repairs to cars'. (Emphasis ours). And we find this distinction repeated in Award 1626 and emphasized in Award 1627 where it is said:

> 'We think it is clear that the general rule is that the coupling and uncoupling of air hose in the absence of specific agreement is the exclusive work of carmen (inspectors) when it is performed in connection with and incidental to their regular duties of inspection and repair. It follows that the coupling or uncoupling of air hose, when it is done in connection with or incidental to a carman's regular duties of inspection and repair is not, in the absence of specific agreement, the exclusive work of carmen.' "

Although the Carrier realizes that this award was rendered prior to the agreement of September 25, 1964, and the adoption of Article V by the parties, the findings of Referee Harwood illustrate the intention of the parties in discriminating between air brake tests performed on trains departing the yard, and air brake tests which are related to the coupling of air hose. It was not contemplated that carmen would have a function to perform on operating air brake tests which had no connection whatever with the coupling function.

In conclusion, the Carrier insists the Board must find Article V had no application to the circumstances. The air test made by the train crew of Extra 235 North on March 22, 1966 was strictly in compliance with Operating Rule 1304, and was for the purpose of moving this train. All of the air hoses had been coupled by carmen the day before and this air brake test was completely isolated from any carmen's work.

By reason of the above and foregoing this claim must 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 dispue waived right of appearance at hearing thereon.

Petitioner contends that Carrier violated Article V of the September 25, 1964 National Shop Crafts Agreement when other than carmen inspected and tested the brakes on Extra Road Train No. 235 prior to departure from the Murray Departure Yard where carmen were employed and on duty. Claimant

was available for call on the date of claim, March 22, 1966, and seeks four (4) hours' compensation at the straight time rate under Rule 6 of the applicable Agreement.

Carrier contends that the fourteen car train involved herein had been made up on the previous day when carmen coupled all the air hoses between the cars as well as the air hose between the last car and the caboose, and that the operating crew merely made air brake tests in compliance with Operating Rule 1304 on the claim date when the locomotive was attached prior to departure. The gravamen of the Company's position is that the pertinent language contained in Article V of the 1964 Agreement has no application when operating air brake tests are unrelated to the coupling function, and that an exception should be granted to trainmen making air brake tests so long as such tests are unrelated to the coupling of the air hoses between cars on the train.

The record here reflects that the Brotherhood of Railroad Trainmen were duly notified of the pendency of this case and afforded an opportunity to file a submission. Furthermore, the effective Agreement between the Carrier and the Brotherhood of Railroad Trainmen was submitted in evidence before the Board.

Petitioner avers that the train crew walked the full length of the fourteen (14) car train and inspected each car for air leaks and also whether the brake shoes were tight against the wheels. It is the position of Petitioner that the disputed work clearly comes within the purview of Article V of the September 25, 1964 Agreement.

Analysis of Article V of the September 25, 1964 Agreement discloses that it expressly covers "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 * * *." (Emphasis supplied) Hence, it is evident that the inspecting of air brakes involved in this dispute is encompassed by Article V whether or not incidental coupling of air hoses was required simultaneously with such inspection.

In our Award No. 5368 certain criteria were established for determining whether Article V of the September 25, 1964 Agreement is applicable and the factual basis for the instant claim meets all of these criteria. Accordingly, we must conclude that the Carrier violated Article V of said National Agreement (Awards Nos. 5341, 5367, 5461 and 5537).

Although Carrier asserts that the disputed work would have been performed by carmen on duty rather than the claimant, who was off duty but available for call, the record suggests that such carmen on duty were busily engaged in other work when the disputed work was performed. Accordingly, the claim should be sustained because of claimant's apparent loss of an opportunity to perform the disputed work.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.

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