Award No. 5708
Docket No. 5541
2-PTR-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. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.—C. I. O. (Carmen)

PORTLAND TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Portland Terminal Railroad Company violated Article V of the Agreement of September 25, 1964, when other than carmen coupled air hose and made brake air test on transfer train leaving the Portland Terminal Railroad Guilds Lake departure yard about 8:15 P.M., September 19, 1966.

2. That accordingly, the Portland Terminal Railroad Company compensate Carman C. A. Sortland in the amount of four hours pay at the pro rata rate for September 19, 1966 for said violation.

EMPLOYES' STATEMENT OF FACTS: At Portland, Oregon, the Portland Terminal Railroad Company, herein after referred to as the Carrier, has what is known as the Guilds Lake Yard from which trains depart and also what is known as the Union Station Yard from which trains depart.

On September 19, 1966, prior to 8:15 P.M. transfer train was made up at Guilds Lake Yard. This train consisted of an engine and forty (40) or forty-five (45) cars and after the mechanical inspection, which is required by the Carrier under their rules and under the provisions of the Power Brake Law, by other than carmen, this transfer train then departed for Union Station Yard, which is approximately 2 1/2 miles distance and requires crossing 5 busy city streets to arrive at its destination.

This inspection, which as stated above is required by the Carrier and Power Brake Law, was made by other than carmen in the Guilds Lake Yard, Portland, Oregon, where carmen were on duty in the yard, and, in fact, one such Carman did change a bursted air hose on S.P. 512069 box car, the lead car on this transfer train.

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

The Brotherhood's position on this property that Article V of the Shop Crafts' Agreement of September 25, 1964 gives them exclusive right to the work involved in the instant claim is wholly inconsistent with advice furnished them by their own Grand Lodge. Attached to this submission and identified as Exhibit "A" is copy of a letter which was issued to all General Chairmen of the Brotherhood Railway Carmen of America by General President Bernhardt of that organization. Particular attention is directed to the second paragraph of this letter which reads as follows:

> "It seems the employees are laboring under the impression that the Rule is similar in type to a Scope Rule in which the work referred to is carmen's work **under any circumstances and this is not so.**" (Emphasis added)

It is obvious that the employees' Grand Lodge, in interpreting Article V of the September 25, 1964 Agreement, has recognized that the work here in dispute is not Carmen's work, under certain circumstances. It is our position that these circumstances are the same circumstances upon which we have based our defense of the instant claim, which may be summarized as follows:

(1) the making of air tests performed solely to determine if brakes have applied to the wheels of cars is not the exclusive work of Carmen, but may be performed by Yardmen as an incidental part of their duties;

(2) Article V of the September 25, 1964 Shop Crafts' Agreement has no application on this property inasmuch as it is restricted to "yard or terminals where carmen in the service of the carrier operating or servicing the trains are employed and are on duty in the departure yard, coach yard, or passenger terminal from which trains depart", i.e., the departure yard for road service operations.

(3) Finally, the yard transfer movement described in this submission is not a "train" either as that term has commonly been used for many years, or as the term has long been used in the Consolidated Code of Operating Rules, or as the term is used in Article V of the September 25, 1964 Agreement.

For the reasons set forth above, the instant claim which the employees now have progressed to this Board is wholly without merit and we respectfully request that it be declined.

(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.

Carrier is a switching and terminal company owned by three other railway companies and operates equipment and facilities and performs services for its proprietary tenant lines. This Carrier operates two main yards: Depot Yard and Guilds Lake Yard which are separated by two miles of main track. Carrier's property is an initial and final terminal for Northern Pacific Railroad road crews. It hauls no passengers and operates no trunk line service. Carrier's operations are limited to making up and breaking up trains, industrial switching, storage of cars and the inter-yard transfer service. On September 19, 1966, Carrier's yard crew coupled hose and made a "set-up and release" air test on certain cars which the crew was to move from Guilds Lake Yard to the Depot Yard. The Organization contends that Carrier violated the current Agreement when it instructed or permitted the switch crew to switch, couple air hose and test the brakes on these cars prior to its departure from Guilds Lake Yard to Union Station Departure Yard, Portland, Oregon. The Organization contends that Article V of the Agreement of September 25, 1964, confers this work on the carmen who were employed and on duty in the Guilds Lake Yard at the time this work was performed by switchmen. This rule is 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."

Carrier contends that the work performed by the switchmen did not involve a mechanical inspection for the reason that none was required under the Power Brake Law; that the switchmen merely checked the pressure gauge at the back end of the last car of train. Carrier further contends that hose coupling is exclusive to carmen only when a mechanical inspection is made; that Section 132.13 (e) (1) is the only section in the Power Brake Law applicable to the resolving of this dispute. Section 132.13 (e) (1) is as follows:

"Transfer train and yard train movements not exceeding 20 miles, must have the air brake hose coupled between all cars, and after the brake system is charged to not less than 60 pounds, a 15 pound service brake pipe reduction must be made to determine that the brakes are applied on each car before releasing and proceeding."

This referee takes notice that the third party to this dispute (switchmen's organization) was given proper notice at the time this dispute was filed before this Board. This referee further takes notice that the record in this case contains no response from the switchmen's organization. However, the switchmen's Agreement between the Portland Terminal Railroad Company and the United Transportation Union has been included in the docket file of this dispute and has been considered in reaching a decision herein.

This Board finds that the burden of proof of the allegations contained in the employees' submission is on the Organization. Although there appears

in the Organization's submission the allegation that a mechanical inspection was made by switchmen, this Board fails to find any probative evidence substantiationg this allegation and further finds that the Carrier has successfully rebutted such allegations. A mechanical inspection would have included checking and repairing leaks, angle cocks, retaining valves, piston travel and other complicated required inspection points which would require tools and skills not possessed by the yard crew. Article V above cited in its reference to insecting and testing of air brakes contemplates a full mechanical inspection and not merely a simple "set-up and release" air test, as performed in this instance. This was not a "brake inspection" as required by Section 132.12 (a)-(h) of the Power Brake Law for the reason that these trains worked on by the yard crew traveled a distance of only approximately two miles.

The Organizatinon has also failed in sustaining its burden of proof that the cars involved "departed" a "departure yard." The evidence in this case was that both yards (Guilds Lake Yard and Depot Yard) were wholly within a common yard and switching limits.

There are numerous awards cited by Carrier to the effect that the air brake test, such as involved in the instant claim, is not the exclusive work of carmen and may be performed by trainmen as an incidental part of their duties. See Award 27 of Special Board of Adjustment No. 686, Awards 86 and 90 of Special Board of Adjustment No. 61; First Division Awards 20227 and 19087 and Second Division Awards Nos. 4565 and 4446.

The evidence further shows that Carrier is a switching and terminal company and all service performed is considered yard service.

This Board further finds that the language in Article V above quoted, "from which trains depart" refers to a departure for road service operations. There being no probative evidence in this case that the cars involved departed for road service, it must follow that the said Article V does not apply in this instance.

For the foregoing reasons, we will follow Awards Nos. 5192 (Weston), 5495 (Knox), 5485 (Dugan), 5462 and 5460 (Coburn) and 5439 (Kane)

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1969.

LABOR MEMBERS' DISSENT TO AWARD NO. 5708

Award 5708 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 (John-

son)—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.

/s/ O. L. Wertz
O. L. Wertz

/s/ D. S. Anderson
D. S. Anderson

/s/ E. J. McDermott
E. J. McDermott

/s/ R. E. Stenzinger
R. E. Stenzinger

/s/ Edward H. Wolfe
Edward H. Wolfe

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