

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated Article V of the September 25, 1964 Agreement and Rule 30 of the current Agreement in effect on the Burlington Northern, Incorporated, when they assigned other than carmen to couple hoses in connection with a mechanical inspection and air test on transfer DE6016 leaving the Burlington Northern, Incorporated, departure yard about 12:25 P.M. Duluth, Minnesota yard on November 14, 1971 with 45 cars.
2. That accordingly the Burlington Northern, Incorporated, be ordered to compensate Carman E. D. Riley in the amount of four (4) hours at the straight time rate for November 14, 1971.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant, a Carman, was on duty at the time of the alleged violation. On the day in question, members of the switch crew coupled air hoses and made an air brake test on 45 cars which were in the Duluth Yard and were to depart to the Superior Yard of Carrier.

The central issue in this dispute, among the several issues raised is whether or not Carmen have the exclusive right to couple air hoses and inspect air brakes thereafter, on a movement of cars within terminal limits. Petitioner does not deny that the two yards involved are within one terminal area, and the record contains no evidence to support a contrary conclusion. Rule 30, which is relied on by Petitioner reads:

"Rule 30. 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."

In interpreting the above language, which is identical with the terms of Article V of the September 25, 1964 National Agreement, we set forth three criteria in Award 5368:

- "1. Carmen in the employment of the Carrier are 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."

The Organization cites Awards 5341, 5367, 5461, 5533, 5694, 5724 and 5759 in support of its position. In all of those Awards the cars involved departed the terminal or yard limits, and hence the factual circumstances may be distinguished from those herein. For example, in Awards 5461, we said:

".... It is, therefore clear that the yards here involved were, in fact, departure yards from which trains departed for the purpose of making interchange deliveries to other Carriers or to consignees located outside the limits of those yards."

Carrier relies on a series of Awards which hold that Carmen do not have the exclusive right to coupling air hose and related air tests incidental to the handling or movement of cars within yard limits (Award 5535). These Awards, including 5566, 5676, 5192, 5441, 5320 and 5550, which involved the Organization and one of the predecessor Carriers to the instant Carrier, all deny similar claims involving the same principles as those herein. We do not find the reasoning in those Awards to be palpably in error; the issue herein has been resolved on many occasions heretofore. For these reasons, and on the basis of the third criteria specified above not having been met, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of April, 1974.