Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6999
SECOND DIVISION Docket No. 6826
2-NOPB-CM-'76

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. 99, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(New Orleans Public Belt Railroad

Dispute: Claim of Employes:

1. That the New Orleans Public Belt Railroad violated Article V of the September 25, 1964 Agreement when on April 25, 1973 and thereafter it assigned other than Carmen the work of air brake test and inspection and the relating coupling of air hose on trains departing Cotton Warehouse yards during the last shift.

2. That accordingly, Carrier be ordered to additionally compensate Carman L. Hauck, Sr., in the amount of four (4) hours at the pro rata rate for April 25, 1973 and each day thereafter until violation is corrected; or in the event Claimant Hauck no longer holds the assignment the claim will be in behalf of the Carman so assigned; that the monetary claim be increased in the amount of 6% per annum as interest, compounded annually.

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.

This dispute is one of a long series concerned with the interpretation of Article V of the September 25, 1964 National Agreement. In the instant case we are dealing with a Carrier which is a switching and terminal railroad only, operating in the New Orleans metropolitan area. It is generally accepted that Carrier's tracks constitute one continuous yard within which are several classification yards. This case involves the movement of a cut of cars from one classification yard to another classification yard (including industries on Carrier's tracks).

Petitioner argues that this dispute is different than the host of earlier cases primarily in that if the Claim is denied, there is no way that Article V can be applied to this Carrier; it is urged that this raises the question of why Article V was **adopted ab initio.** Further it is argued that since the term "road trains" was recommended by Emergency Board No. 160 and was not included in the rule as negotiated, the rule applies to all trains. Article V provides:

> "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 argues that in the incident involved in this Claim there was no departure from established practice. Carrier also points out that a cut of cars rather than a train was involved and Petitioner in the notice resulting in the ultimate negotiation of Article V had requested a rule reading:

> "The coupling and uncoupling of air, steam and signal hose, testing air brakes and appurtenances on trains or cuts of cars in yards and terminals, shall be carmens' work."

The Organization did not secure this rule and Carrier argues that this Board cannot furnish them with a rule which they were unable to secure through collective bargaining, e.g. a rule applying to cuts of cars. Carrier also refers to prior Awards of this Board dealing with closely similar factual situations and the same issue, particularly Award 6671.

In interpreting Article V of the 1964 National Agreement this Board has adhered to the three criteria enunciated in Award 5368. The third criteria in that Award was that the train involved departs the departure yard or terminal; Carmen must meet all three criteria in order to establish a right to the work. In this case the cut of cars moved from one classification yard to another and did not depart the yard or terminal. Hence Petitioner did not prove that the criteria above was met. We held similarly in many cases including Award 6671 and also in Award 5708 which also dealt with a switching and terminal railroad. With respect to the many Awards cited by Petitioner we must repeat the statement we made in Award 6827:

> "... Nowhere in any of those Awards did the Board sustain Petitioner's position where it was not shown that the cars involved departed the terminal or yard limits ... the Petitioner must prove an actual departure from the yard or terminal in question."

We are not persuaded that the adoption of the National Agreement, including Article V by Carrier proves that it must apply Article V as contended by Petitioner. We note that Carrier and a group of Organizations merely adopted the Agreement as a whole, without any reference to a particular provision. We are also not persuaded the distinction between road and yard service has any application to this case, as contended by Petitioner. We must deny the Claim based on the criteria for interpretation of Article V, which have been long established, not having been met.

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 /es/
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of January, 1976.