

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That the Missouri Pacific Railroad Company violated Rule 117 of the Controlling Agreement and Article V of Agreement of September 25, 1964, as amended, when they arbitrarily used Car Foreman C. L. Womble to inspect and make brake test on outbound train No. 866 while this train was in track No. 44 of the Settegast Train Yard, Houston, Texas, July 2, 1976.
- (2) That the Missouri Pacific Railroad Company be ordered to compensate Carman S. Rodriguez in the amount of four (4) hours at the pro rata rate account this violation.

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 parties are in dispute as to the specific events which gave rise to this claim.

Petitioner asserts that Car Foreman Womble performed carmen's work in making an air brake test on an outbound train. As described by the Petitioner, Car Inspector James was instructed to perform the brake test. When he tried to communicate with the train engineer, he found the radio not operating. Foreman Womble then directed James to return to servicing journal boxes and that he would do the brake test. Car Inspector James submitted a statement that "the complete test was made by Foreman Womble, without any help from myself."

Petitioner cites the foreman's action as violative of Rule 117 (Carmen Classification of Work) and Article V of the September 25, 1964 agreement which reserves to carmen, in yards or terminals from which trains depart, the "inspecting and testing of air brakes and appurtenances."

Carrier, on the other hand, disputes that the Foreman performed the brake test, as alleged by Inspector James. The fact is, Carrier asserts, that the radio in the caboose was malfunctioning so that Inspector James could not be heard by the train engineer. In support, Carrier cites Inspector James' written statement: "... I found radio on caboose #1346 dead." The Foreman overheard James' transmission; allowed James to perform the test; and used his own hand-held radio to relay to the train engineer that the brake set and release test was successfully completed. Carrier denied that the Foreman walked the train to check the brakes, an unnecessary step since the ground air test had already been done.

Carrier maintains that the Foreman's only work was to relay the message over his hand set radio, in fulfillment of his supervisory responsibilities. Carrier cites Rule 26(a) in this connection:

"This rule does not prohibit foremen in the exercise of their duties to perform work."

Carrier also holds that neither rule cited by Petitioner reserves to carmen the relaying of radio transmissions.

In essence, therefore, we are confronted with a conflict between the only two individuals in a position to testify as to whether the Foreman performed a brake inspection after he relayed the results of the set and release test to the engineer. The conflicting statements as to the facts are irreconcilable and unresolvable.

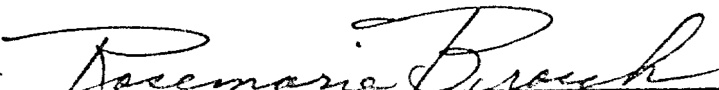
Since the question is unresolved, we cannot conclude from the record that a violation has occurred. Petitioner has not met the burden of proof. We must, therefore, dismiss the claim for lack of probative evidence.

A W A R D

Claim dismissed.

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 19th day of April, 1979.