Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7997
SECOND DIVISION Docket No. 7921-T
2-MP-CM-'79

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Article V of the Agreement of September 25, 1964, as amended December 5, 1975, when other than carmen inspected, coupled air hose, and made brake test on train departing the Missouri Pacific Railroad Company's departure yard at 21st Street, St. Louis, Missouri, February 20, 1977, starting at 1:10 p.m. with engine No. 1640 and thirty-two (32) cars, departing at 1:45 p.m.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Kenneth Blyzes, who was working on adjacent track, in the amount of one (1) hour at the pro rata rate for February 20, 1977.

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 concerns claim of the Organization that a Carman was improperly denied work of inspecting, coupling air hose and making brake test in connection with movement of 32 freight cars from the 21st Street yard on February 20, 1977. There is no denial by the Carrier that this work was performed by other than Carmen.

The Organization rests its case on the authority of Article V of the Agreement of September 25, 1964, and the amendment December 5, 1975, contained in Article VI. These read as follows:

"Article V - Coupling, Inspecting, & Testing

In yards or terminals where Carmen in the service of the Carrier are 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 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."

"Article VI - Coupling, Inspection and Testing

Article V of the September 25, 1964 National Agreement is amended by designating the two existing paragraphs (a) and (b) and by adding the following new paragraphs (c), (d), (e), (f) and (g):

(c) If as of July 1, 1974 a Railroad had Carmen assigned to a shift at a departure yard, coach yard or passenger terminal from which trains depart, who performed the work set forth in this rule, it may not discontinue the performance of such work by Carmen on that shift such work (and must restore the performance of such work by Carmen if discontinued in the interim), unless there is not a sufficient amount of such work to justify employing a carman. ..."

An extensive number of Awards of the Board have dealt with the issues arising from the interpretation of Article V, with many sustaining and denial awards depending on the circumstances of the disputes involved. In particular, some awards have given determinative importance to the fact that the Agreement refers to "trains", rather than "road trains", which was the phrase earlier proposed by a Presidential Emergency Board but rejected by the Organization and which did not survive into the finally agreed provision.

The surviving language does however, refer to "trains", and it is on the definition of this word which the Board finds the instant dispute to depend.

There is first to be considered a question of fact.

In its initial claim, the Organization refers to the movement as "Eng. # 1640 departed with 32 cars at 1:45 PM". With this, the Carrier is in full agreement, and nothing in the record of the dispute processing on the property shows to the contrary.

In its submission to the Board, however, the Organization refers to "a train consisting of engine No. 1640 with thirty-two (32) cars and caboose" (page 3). In its rebuttal, the Organization states: "... this train consisted of locomotive, cars and caboose with markers" (page 12).

To this, the Carrier takes exception in its rebuttal when it affirms as follows:

> "In the handling of the claim on the property, General Chairman Daniels at no time alleged any caboose was involved and affirmatively stated that the facts were as stated by the Local Chairman. We repeat, the Local Chairman specifically made mention of the engine number and 32 cars and it must be taken as fact that absence of any mention of a caboose is due to no caboose being used for the movement of the cars.
>
> In this connection, we call attention to the Carrier's statement of page 5 of the Carrier's submission '(n)ormally no caboose is used' on this switch move. The investigation of the claim by the Carrier has affirmed that no caboose was used. Accordingly, the Carrier firmly objects to the introduction into the record of a new and totally unfounded allegation by the General Chairman that a caboose was used on the cut of cars."

The Board does not undertake to resolve these contradictory arguments in the parties' submissions and rebuttals. Since, however, no mention was made on the property as to the use of caboose and/or markers is not proven (and it is on the Organization that the burden of proof lies).

This is essentially significant in that the Carrier argues that what was involved was not a "train" (whether road or otherwise) but a "cut of cars" such as usually involved in intra-yard movements. On the basis, the Carrier argues that Article V is inapplicable, and, in this particular instance, the Board concurs.

As argued by the Carrier, the Organization recognizes the difference between a "train" and a "cut of cars". Reference is made to an (unadopted) proposal by the Organization in 1962 as follows:

> "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 carmen's work."

The Board finds that the movement involved herein was that of a "cut of cars" from one yard to another. While Carmen are used for air hose work in connection therewith at times, there is no grant of exclusive jurisdiction as in Article V in reference to "trains" as provided in that Agreement language.

Support of the Board's position in this instance is found in Award No. 5676 (Ritter) which states:

> "Therefore, this Board finds that the particular cut of cars here involved was a movement within the terminal limits from one set of Carrier tracks to another set of Carrier tracks, and did not involve a departure of any kind. Therefore, Article V has no application in this instance. See Awards 5368, 5320, 5535 and 5550."

By distinction the Board's sustaining decision in Award No. 5367 (Ritter) dealt with "a transfer train consisting of an engine, forty-eight (48) cars and a caboose" (emphasis added).

The Organization has failed to prove that the movement in question was a "train" by commonly accepted definition and thus cannot make a convincing case of the applicability of Article V.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of July, 1979.

LABOR MEMBER'S DISSENT TO AWARD NO. 7997, DOCKET NO. 7921-T

The Majority had before it three (3) sustaining awards on disputes between the same parties. Two of those disputes involved the same yards, i.e., Dupo, Illinois to Twenty-first Street Yard in St. Louis, Missouri and Twenty-first Street Yard to Dupo Yard.

This Board has long held that precedent awards, particularly between the same parties, should be followed so as to offer guidance rather than utter chaos. Awards supporting that theory were also before the Majority.

The Majority, however, chose to place its own interpretation of what constitutes a "train", acknowledging at the same time that Article V of the September 25, 1964 Agreement is not restricted to "road trains" as alleged by the Carrier. The Majority's interpretation of a "train" would require that a "caboose" be included in the consist. But a caboose is attached for the convenience of the crew. There is nothing in any agreement or regulation that a caboose be attached before a cut of cars becomes a "train". It would be a shallow agreement indeed if its provisions can be circumvented by simply removing a "caboose".

We believe the interpretation placed on the word "train" is misguided and direct the Majority to award 5676 which was cited in support of its position. The facts were much different where the movement was from one set of track to another as opposed to moving from one yard to another as in the present case. There is quite

a distinction, which requires our dissent.

C. E. Wheeler
Labor Member