

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

- No. 1. That Carrier violated the terms of the controlling agreement, specifically Rule 144 1/2, when on the date of December 26, 1980, third shift of the December 25, 1980, Christmas Holiday, at Washington, Indiana. Carrier allowed Trainmen to couple air hose and make air brake test on, both, SL-TT Train, Engine #4311 with twenty-three (23) cars, and Train NETER, Engine #4350, with one-hundred and twenty-six (126) cars. Train SL-TT departing yards at 2:30 A.M., and Train NETER departing yards at 5:00 A.M. on the date of December 26, 1980, such work of coupling, testing air brakes, and inspecting, work accruing specifically to the carmen craft by virtue of the above mentioned rule.
- No. 2. That Carrier be ordered to compensate Carman, J. A. Mahan, two (2) hours and forty (40) minutes pay at the time and one-half 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 employes 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.

On the third shift of the Christmas Holiday, December 25, 1981, which carried over until 7:00 a.m. of December 26, 1981, all carmen at the Carrier's Washington, Indiana shops were laid in for the holiday. During the shift, Train SL-TT which had previously arrived was called for 12:30 a.m. The train crew connected the locomotives and caboose to the cars, coupled the cars at the street crossing, and trainmen took their own air test and departed the Shops Terminal Yards with 23 cars at 2:30 a.m. Also, Train NETER, a through train with 126 cars located on the main track, was called for 5:00 a.m. and after coupling the street crossing the trainmen took their own air brake test and departed.

Carmen are on duty at Washington, Indiana seven days a week twenty-four hours a day; and, as set forth above, all carmen were laid in for the Christmas holiday on the third shift of December 25, 1981 which extended to 7:00 a.m. on December 26, 1981.

The claim in this case is for two hours and forty minutes' pay at the time and one-half rate on behalf of Carman J. A. Mahan based on the Organization's contention that the work performed by the trainmen is specifically designated as carmen's work under Rule 144 1/2 (a) and (c). The Organization contends that Rule 144 1/2 (a) identifies that inspecting and testing of air brakes is reserved to carmen. The Organization contends that Rule 144 1/2, paragraph (c), provides that if as of July 1, 1974 a carman was assigned to a shift at a departure yard from which trains depart, performing such work the Carrier may not discontinue such work by carmen on that shift and have employees other than carmen perform such work. The Organization contends that the Carrier did just that in this case, for all carmen assigned to the third shift were laid in for the holiday and the Carrier allowed other employees, trainmen in the instant case, to perform work accruing to the carmen craft, in violation of the provisions of Rule 144 1/2 (c).

The Carrier contends that the work of coupling air hoses and performing air brake tests has neither been assigned to nor recognized as belonging exclusively to the carman craft and train crews have performed such service from the inception of the air brake. The Carrier states that Rule 144 1/2 (a) specifically refers only to situations where carmen are on duty and no carmen were on duty at the time in question; and that Claimant Mahan instead was observing the holiday and was paid at the pro rata rate for the holiday. The Carrier refers to a portion of the language of Rule 144 1/2 (c) that: "if a railroad had carmen assigned to a shift...who performed the work set forth in this rule...it may not discontinue the performance of such work by carmen." (Emphasis added by Carrier) The Carrier states that this Rule is inapplicable as the Board has consistently held that holidays are not to be considered "assigned days". Thus there were no carmen assigned to the third shift on December 25, 1980. The Carrier refers to Second Division Award 5460 and other awards as authority for its position. The Carrier states that the claim is without merit and must be denied.

Rule 144 1/2 of the controlling Agreement, Coupling, Inspecting and Testing, paragraphs (a) and (c) states:

- "(a) 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 carmen.

"(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 and have employees other than carmen perform such work (and must restore the performance of such work by carmen if discontinued in the interim), unless there is not sufficient amount of such work to justify employing a carman."

We have studied the positions of the parties and if the language of Rule 144 1/2 (c) did not exist we would agree with the Carrier that Second Division Award 5460 would be controlling. However, the language of Rule 144 1/2 (c) does in fact exist, and the clear language of this rule must be applied. It is not disputed that as of July 1, 1974 the Carrier had carmen assigned to the third shift at Washington, Indiana who performed the work of inspection and testing of air brakes, the work covered by Rule 144 1/2. And, under the clear language of Rule 144 1/2 (c), the Carrier is specifically prohibited from discontinuing the performance of such work by carmen on that shift and having employees other than carmen perform such work. The Carrier's position that the language of Rule 144 1/2 (c) "assigned to a shift" makes paragraph (c) inapplicable because a holiday is not an "assigned day" is rejected. The Carrier's reference to "assigned to a shift" ignores completely the context in which words "assigned to a shift" are used. These words are used to delineate the effective date of the paragraph: "If as of July 1, 1974 a railroad had carmen assigned to a shift at a departure yard...."

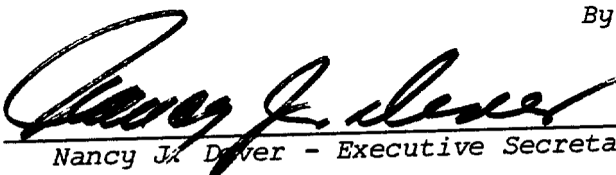
We shall sustain the claim for two hours and forty minutes pay at the time and one-half rate for Carman Mahan.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 10th day of October, 1984