

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That the Baltimore and Ohio Railroad Company violated the terms of the Agreement, specifically Rule 144 1/2, when on the date of October 2, 1982, at Haselton Yard, Youngstown, Ohio, Carrier assigned carmens work of testing air brakes and inspection to train crew, such violation repetitious, and claim continuing until resolved.

2. That accordingly, Claimant, E. Cannistra be made whole account such violation on the date of October 2, 1982, and for each and every violation perpetrated by Carrier thereafter, until resolved: five (5) hours pay at the time and one-half rate, continuing until resolved.

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.

Claimant E. Cannistra is employed by the Carrier at the Haselton Yard in Youngstown, Ohio. In early 1982 (the Organization claiming January 5 and the Carrier claiming February 25 as the exact date) the third shift Car Inspector's position was abolished. The reason for abolishing the position was because of insufficient work to be performed due to adverse business conditions.

On October 2, 1982, two trains arrived at the Haselton Yard during the third shift and picked up cars that had been assembled by the second shift Yard crew, inspected and pre-tested by Carmen on the second shift. After doubling, the train crews performed the necessary air tests and departed the Yard. The first train arrived at 12:40 A.M. and departed at 12:55 A.M. The second train arrived at 1:35 A.M. and departed at 1:55 A.M.

The Organization argues that by allowing the train crews to perform the inspection and air brake tests on October 2, 1982, the Carrier thereby violated Rule 144 1/2 and the Claimant is entitled to five (5) hours pay at the time and one-half rate for each and every violation continuing until resolved. The Carrier asserts that no violation of Rule 144 1/2 has been established and the air test work is not exclusive to the Carmen and may be performed by the Trainmen. The UTU (representing the Trainmen) has declined to intervene as a Third Party.

Rule 144 1/2 reads as follows:

"Coupling, Inspection and Testing:

- (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 the carmen".

The issue in this case is not one of first impression. The Board has held on numerous occasions that under Rule 144 1/2 (or similarly worded provisions) three criteria must be met to sustain the kind of claim made by the Organization, namely 1) the Carman in the employ of the Carrier is on duty; 2) the train was tested, inspected and/or coupled in a train yard or terminal; and 3) the train involved departs a yard or terminal. Second Division Award Nos. 10680, 10107, 6827, 5368. The Board has further held on numerous occasions that the making of air tests is work that is incidental to the duties of train crews handling their trains and not exclusively the work of Carmen. Second Division Award Nos. 10591, 10518, 10515, 10114, 7997, 5708, 5485, 5462, 5439. See also Second Division Award Nos. 10021, 10011, 6671, 5460, 5441.

Here, it is undisputed that at the time at issue, the Carman was not on duty. The three criteria required under Rule 144 1/2 therefore cannot be met. Coupled with the fact that the testing work is not exclusively the Carmen's, the Claim must be denied. In light of this finding, the other arguments made by the parties need not be addressed. Under the facts of this case, there is insufficient evidence to support a Claim that Rule 144 1/2 is purposely being circumvented by the Carrier.

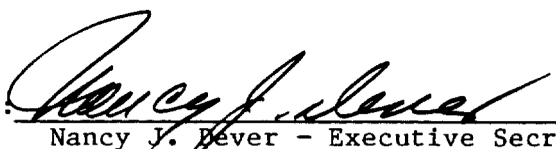
Form 1
Page 3

Award No. 10884
Docket No. 10597-T
2-B&O-CM-'86

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1986.