

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin 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 Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, Rules 138 and 144 1/2, when on the date of November 26, 1983, (holiday), they laid-in all carmen positions inclusive of car inspector position, third shift, New Castle Junction, New Castle, Pennsylvania, and allowed train crews to perform work specifically accruing to the carmen craft, terminal air brake test, inspection, etc., despite the abundance of work anticipated and performed on that date.

2. That accordingly, the Baltimore and Ohio Railroad Company be ordered to compensate Carman D. Bass for all time lost as a result of such violation, eight (8) hours pay at the time and one-half rate.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

During the Thanksgiving holiday in 1983, all Carmen positions were blanked at the Carrier's New Castle Junction facility. During the third shift commencing on November 25 and continuing through November 26, 1983, four trains were called out of the New Castle Junction. Air brake tests were performed on three of the four trains by the train crews and Carmen were not called to perform this work.

The Organization argued the Carrier violated Rules 138 and 144 1/2 and by extension, the Federal Power Brake Law, revised October 1, 1982. The Organization states the Carrier knew of this work in advance and it was the Carrier who scheduled it and it was enough work to justify a Car Inspector position. The reason the Carmen were not available was because the Carrier had blanked the position. The Organization cited an Award 10117 which they claimed set precedent on this property. The Organization asks that Carman D. Bass be paid eight hours at the time and one-half rate.

The Carrier admitted that four trains were air tested during the third shift in question. They argue that Rule 144 1/2 does not grant exclusive rights to this work to Carmen. It was the Carrier's contention that three conditions must be met in order to accrue this work to the Organization:

1. Organization members are employed and on duty.
2. The train is physically located in the departure yard or terminal.
3. The train involved actually leaves the departure yard or terminal.

The Carrier notes that only the last two conditions are met. Condition Number 1, in the Carrier's opinion, was not met. Holidays are not assigned days. The Carrier cited many Awards of the Second Division and noted there is a Dissent to Award 10117 on file. Without prejudice to the foregoing arguments, the Carrier stated that the Claim is excessive; no Rule supports any penalty pay. The pro-rata rate is proper in that if the Organization's Claim is sustained, it should only be for the time actually worked.


Upon complete review of the evidence, including the many Awards submitted and appropriate Dissents, the Board finds that the only reason the Carmen did not meet all of the three criteria noted above was that the Carrier itself had blanked the Carmen positions on the date in question. It was the Carrier's choice to do so. No Rule cited allows the Carrier to have other crafts perform this work under the circumstances of this case. In addition, the amount of work performed was substantial. The Board does not feel, however, it appropriate to force the Carrier to have a Carman on duty for an entire shift when work was performed only between 12:40 A.M. and 5:34 A.M. Therefore, the Board will order five hours of pay of the contractually required rate for work performed on a holiday.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 9th day of July 1986.