

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

(Brotherhood Railway Carmen of the United States  
( and Canada  
Parties to Dispute: (  
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That the St. Louis Southwestern Railway Company violated the controlling agreement and the Railway Labor Act when employes other than Carmen were instructed to couple the air hose, make the air brake test, and inspect the following trains: Extra 7426, stored; Extra 7641 East, departed at 2:30 PM; Extra 9189, departed at 4:50 PM. This work occurred in Herington, Kansas on April 27, 1983.

2. That the St. Louis Southwestern Railway Company be required to pay Carman P. W. Riffel twelve (12) hours pay at the proper pro rata rate of pay account he was not called and used to do this work.

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.

The Claimant is employed by the Carrier as a Carman at its Herington, Kansas facility.

It is undisputed that Carmen are on duty at the Carrier's facility from 5:30 A.M. to 1:30 P.M. seven days a week. On April 27, 1983, Train Extra 7426 was inspected and stored; Train Extra 7641 departed at 2:30 P.M. and Train Extra 9189 departed at 4:50 P.M. The coupling of air hoses, and air brake tests were performed by Trainmen when no Carmen were on duty at the Carrier's Herington facility.

Addendum No. 2 Article V(a) of the Agreements provides as follows:

"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."

It is undisputed that consistent with Addendum No. 2, Article V(a) the work in question, namely, the coupling of air hoses and air brake tests were performed in a yard or facility of the Carrier. Moreover, in compliance with the second criterion, trains depart from the Carrier's yard or facility.

Article V(a) requires a third criterion in order for Carmen to perform the work in question. They must be employed and on duty. This criterion provides the focus of the dispute between the parties.

The Organization contends that this criterion was not satisfied because the Carrier determined that the Carmen would not be on duty after 1:30 P.M. in order to avoid utilizing them from performing work to which they are entitled under the Agreement. Thus, based upon the Organization's argument, Carmen were not on duty when the work in question was performed. The central query to be addressed is whether the Carrier's determination that Carmen were not to be on duty after 1:30 P.M. was exercised arbitrarily or in bad faith so it could be stated that it deliberately circumvented the Agreement to avoid assigning the work to Carmen. The evidentiary record does not provide support for this Claim.

The Carrier reduced the Carmen forces from eight (8) to three (3) employes and confined their service to one (1) shift (5:30 A.M. to 1:30 P.M. seven (7) days a week). The reduction of Carmen occurred roughly seven (7) months prior to April 27, 1984 and was prompted by a change in Federal regulations from 500 mile to 1,000 mile inspections. As a result, there was no need for inspections at the Herington facility. In turn, the work was not sufficient to justify the employment of eight (8) Carmen. In any event, this Board cannot conclude that the Carrier exercised bad faith in refusing to hold over Carmen to perform the work in question; thus it cannot be concluded that the Carrier deliberately circumvented the Agreement by failing to determine that the Carmen should be on duty after 1:30 P.M. to couple the air hoses and perform air tests on April 27, 1984. Since the Carmen were not on duty after 1:30 P.M. on April 27, there is no prohibition against the train crew performing the work at 2:30 P.M. and 4:30 P.M. on April 27. See Second Division Awards Nos. 10515, 10021, 8767, 8140, 6999 and 5368.

As a final matter to be considered, the Organization contends that under Rules 34-1 and 71, the Assignment of Work and Classification of Work Rules, the work performed by the train crew on April 27, 1984 is reserved exclusively to members of the Carmen's craft. Neither of these Rules reserves to Carmen exclusively, the work of coupling of air hoses and making air brake tests. See for example, Second Division Awards Nos. 1626, 1636 and 4648. Accordingly, the instant Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of September 1986.