

The Second Division consisted of the regular members and in addition Referee Join J. Mikrut, Jr. 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 employees other than Carmen were instructed to couple the air hose on the twenty (20) car train transferring cars to the BN and ICG Railroads.

2. That the St. Louis Southwestern Railway Company be required to pay Carman H. C. Cristie two hours and forty minutes (2 hours 40 minutes) pay at one and one-half the proper pro rata rate of pay.

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.

Claimant was on duty during the morning of Sunday, November 29, 1981, at Carrier's Armourdale Yard located in Kansas City, Kansas. At approximately 8:35 AM on the day in question, Claimant was performing air tests on Train CHLAT. At that same time, the switch crew of Engine No. 2650 coupled the air hose on a twenty (20) car BN-ICG transfer on #402 track which was destined for the BN-ICG Kansas City Yard.

Pursuant to the filing of a Claim in protest of Carrier's action herein, Organization argues that Carrier is attempting to circumvent the Parties' October 1, 1977 Controlling Agreement by permitting non-Carmen to perform work which is contractually reserved to the Carmens' Craft. Specifically, Organization contends that Carrier violated Addendum No. 2, Article V, Paragraph A - Coupling, Inspecting and Testing (adopting Article V - Coupling, Inspecting and Testing from the September 25, 1964 Mediation Agreement as amended) which 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 the carmen."

The Organization cites numerous Second Division Awards which establish a "test" which is to be utilized in order to determine when air hose coupling is work which is exclusively reserved to the Carmens' Craft. For example, in Second Division Award No. 5368 it was held that:

"There being nothing ambiguous in the language of Article V, the interpretation is entirely dependent upon the factual situation involved in each independent dispute. In order to sustain a claim involving Article V, this Board must find the following facts exist:

1. Carmen in the employment of the Carrier are on duty.
2. The train tested, inspected or coupled is in a departure yard or terminal.
3. That the train involved departs the departure yard or terminal."

The Organization also notes adverse Award No. 7997 wherein the Referee drew a distinction on this property between a "train" and a "cut of cars." In that Award, Referee Marx limited the Carmen's exclusive right found in Article V to perform the disputed work only on groups of cars which can be defined as a "train." The Organization contends that this Award is in error and has been subsequently overruled by Awards No. 8602 and 8448, both adopting Award 5368's three (3) part test and sustaining Organization's exclusive contractual right to perform air hose coupling on trains of this Carrier. By applying the test as prescribed in Award No. 5368, to the facts of this dispute, the Organization urges this Board to rule in its favor.

As a final pleading, the Organization further urges the Board not to permit an aberration such as Award 7997 to rewrite the Parties' Agreement on this property.

The Carrier, in significant part, contends that Award No. 7997 is not an aberration, but rather, draws a valid distinction in determining if air hose coupling is contractually reserved to the Carmens' Craft as per Article V of the Controlling Agreement. In support of this position Carrier argues that the Uniform Code of Operating Rules defines a "train" as:

"... An engine, or more than one engine coupled, with or without cars, displaying markers."

Continuing, referencing revised Rule 19 of the above cited Uniform Code, Carrier further offers that:

"A marker must be continuously illuminated while train is authorized and be extinguished when train arrives at destination."

Still yet further, Carrier also asserts that the Uniform Code of Operating Rules defines a "regular train" and an "extra train" as follows:

"Regular Train - A train authorized by a timetable schedule."

"Extra Train - A train not authorized by a timetable schedule."

The essence of Carrier's argument is that the coupling of air on the twenty (20) car BN-ICG transfer involved the coupling of air on a "cut of cars," and not on a "train," and thus was authorized under Second Division Award No. 7997.

The Board has carefully read, studied and considered the complete record in this case and finds that the distinction between a "train" and a "cut of cars" is meritorious. Article V and Awards No. 8448 and 8602 speak only to the Carmens' Craft's exclusive right to perform air hose coupling on "trains," and does not extend this exclusive jurisdiction to consists "other than trains," like a "cut of cars." Award No. 7997 correctly notes this distinction and found Article V inapplicable to disputes involving "cuts of cars." Article V, with respect to this property, despite the Organization's admonishment, has not been rewritten, but rather has been interpreted. The rationale contained in Awards No. 8448 and 8602 focus upon the question of which Craft has the right to perform Article V work on "trains"; however, there was no mention in those Awards of crews performing air hose coupling on a "cut of cars." Additionally, neither of the later Awards cited by the Organization makes reference to the analysis posited in Award No. 7997.

Therefore, because this Board believes that Awards previously interpreting the Agreement on this property should be given precedential effect, we also find Award No. 7997 to be the controlling law in the instant case. Said Award placed upon the Organization the burden of proving that a consist is a "train." After carefully examining the complete record in this case, we find

Form 1  
Page 4

Award No. 11033  
Docket No. 9878-T  
2-SLSW-CM-'86

that Organization has failed its burden of proving that the twenty (20) cars coupled to Engine No. 2650 in Carrier's Armourdale Yard in Kansas City, Kansas on the morning of November 29, 1981, met the Uniform Code of Operating Rules' definition of a "train." Thus, the Board has no choice but to deny this Claim.

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 15th day of October 1986.