Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11059
SECOND DIVISION Docket No. 10841-T
2-C&NW-CM-'86

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: (
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Carmen Elmer Carlson, Jerry Dirks and Gus LaScala were deprived of work and wages to which they are entitled when the Chicago and North Western Transportation Company violated the controlling agreement when it improperly assigned train crews to perform carmen's work of coupling air hose and making air test on October 27, 28, 31; November 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, and 30, 1983.

2. That the Chicago and North Western Transportation Company be ordered to compensate the three Carmen Claimants in the amount of eight (8) hours pay at the time and one-half rate for each of the above listed dates; amounting to $155.44 for each date claimed.

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 dates specified in the Claim, the Carrier assigned train crews to perform coupling of air hoses and making of air tests at the Carrier's Sioux City, Iowa Yard. The Organization asserts violations of Rules 28, 29, 53 and 124 and Article V of the September 1964 Agreement, and Article VI, Section c, d, e, and f of the Mediation Agreement, Case A, 9699 revising Article V of the September 1964 Agreement.

The Carrier asserts that the work in question was not solely Carmen's work but that the work was also a part of the train crew's duties. Further, the Carrier contends that there was not a sufficient amount of the disputed work at Sioux City to justify the Claims.

The United Transportation Union has declined to intervene in this matter.

This dispute is part of a series of Claims concerning the assignment of the same work claimed by the Organization herein to train crews at the Sioux City Yard. We have recently dealt with the issues presented herein in a series of Awards. The crux of the dispute in this case, as in the other cited cases concerns the result of a joint study performed by the Carrier and the Organization under Rule 29. As we found in Award No. 11023:

> "On September 8, 1983, the parties agreed to perform a two day joint check to determine if there was sufficient weekend Carmen's work. The check was performed on September 10 and 11, 1983. However, with respect to the results of the joint check, the parties came to exact opposite conclusions. The Organization concluded that there was sufficient work to employ Carmen on the weekends and the Carrier concluded there was not sufficient work. The essential difference (although other minor discrepancies exist) lies in the dispute over whether Carmen or train crews traditionally perform the air test. The Carrier asserts that traditionally the train crews perform those tests and the Organization claims that such work belongs to the Carmen. The result was that the Organization's interpretation of the joint check included the air test work and hence, it concluded that two hours of Carmen's work per shift existed. The Carrier excluded the air test work performed by the train crews and hence concluded that less than two hours of Carmen's work per shift existed.
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> Rule 29 states, in pertinent part:
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> At a point where it is proved to the satisfaction of the parties to this agreement that more than two hours' work is done in any day or night shift in any one day, based on the average of one week, a mechanic will be employed."

Initially, because of the similarity of the Claim in this case to the series of Claims arising at the Sioux City Yard, we do not believe that the form of the Carrier's denials of the instant Claim violates the Agreement as asserted by the Organization. The parties were fully aware of each side's positions on the overall dispute and no prejudice has been demonstrated by the Organization resulting from the form of the Carrier's denials.

With respect to the merits of the Claim, the burden is on the Organization to prove the elements of its Claim. Here, the Organization relies upon the results of the study as it interprets that study and claims there was sufficient work. The Carrier reaches the opposite conclusion. The clear language of Rule 29 states that a Mechanic will be employed "where it is proved to the satisfaction of the parties to this agreement that more than two hours' work is done . . . " [emphasis added]. Since the burden of proof lies with the Organization, we are not persuaded that the Organization has met that burden of showing that the test in question "proved to the satisfaction of the parties" that sufficient work existed. Instead, a serious factual dispute exists concerning whether there was sufficient work to justify the employment of a Carman. We have reviewed the respective positions taken as a result of the test and can not say that the Carrier's conclusion that there was not sufficient work was taken in bad faith or amounted to anything other than a reasoned position. Since the Organization's burden of establishing that there was sufficient work has not been carried, especially under the clear language of Rule 29 requiring that a demonstration be made to the satisfaction of the parties, the Claim must be denied.

Our decision in this matter should not be interpreted to mean that the Organization is barred in the future from asserting that sufficient work exists as a result of changed conditions or from utilizing the provisions of Rule 29 for another test. We simply conclude that based upon the facts presented in this record, the Organization has not met it burden.

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 29th day of October 1986.