

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: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the Agreement of January 1, 1980 and Agreement of September 25, 1964, as amended December 4, 1975 when they assigned employes of another craft to make necessary brake inspection of Trains 814 and 815, April 23, 1983, including the coupling of air hose before said trains departed Houston, Texas Terminal where Carmen are on duty twenty-four (24) hours per day, seven (7) days per week.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman J. Benton in the amount of four (4) hours at the pro rata rate account of this violation.

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 instant Claim arises from the performance of initial terminal brake tests by the train crews on Trains 814 and 815, rather than Carmen at the Carrier's Lloyd Yard facility, at Spring, Texas. To understand the nature of the dispute requires a brief historical context. The Carrier's Settegast Yard, located in Houston, Texas, was constructed in the late 1940's and was the Carrier's only classification yard in the Houston area. Due to an increase in traffic at the Settegast Yard, the Carrier constructed another yard called Lloyd Yard at Spring, Texas, some "18" to "25" miles from Settegast Yard. The Lloyd Yard was opened in 1981 and operations in the Houston area shifted to Lloyd Yard while Settegast Yard underwent rehabilitation which was completed in late 1981. However, due to a drastic reduction in traffic,

the Carrier concluded that Settegast Yard was capable of handling virtually all of its business, and Lloyd Yard, subsequent to the rehabilitation of Settegast Yard has never been utilized as intended by the Carrier.

When construction of Lloyd Yard neared completion, the Carrier began to move the bulk of its operations from Settegast Yard to Lloyd Yard so that Settegast Yard could undergo rapid and unhindered rehabilitation. It was intended at the time that some of the work would remain at Lloyd and the rest would revert back to Settegast after it was rehabilitated. The movement of work to Lloyd was accompanied by the movement of Carmen positions to the new yard. The Organization objected to the movement of Carmen to Lloyd without an agreement and contended that the movement of work from Settegast to Lloyd represented a "transfer of work" thereby entitling various Carmen at Houston to the protective benefits contained in the September 25, 1964 Agreement. The Carrier did not agree with the position of the Organization and offered to amend the rules so it would have the effect of allowing Carmen to work at either location interchangeably with only one seniority roster covering both locations. Negotiations led to an Agreement dated July 22, 1981.

After the Agreement was entered into and the amount of \$65,000 paid by the Carrier to be distributed to Carmen at Houston proportionately in line with their seniority, the Carrier determined that the reduced level of business could be handled entirely at Settegast Yard. The operations at Lloyd were returned to Settegast and the remaining Carmen jobs at Lloyd were abolished since there was not enough work to justify employing a Carman at that location.

After carefully examining the record, the Board is of the view that the Claim must be denied. In support of its position the Organization relies upon Article V, Section (a) of the September 25, 1964 Agreement, which, in relevant part, provides:

"(a) In yards or terminals where carmen ***
operating or servicing the train are employed
and are on duty in the departure yard, ***
such inspection and testing of air brakes and
appurtenances on trains as is required ***
shall be performed by carmen."

This Board cannot conclude that both the Lloyd Yard and Settegast Yard constitutes a "terminal" or "departure yard" within the scope and meaning of Article V, Section (a) of the 1964 Agreement. The record discloses that no Carmen were on duty at the Lloyd Yard, the departure yard, where the train crews on Trains 814 and 815 performed the initial air brake tests. No Carmen were permanently assigned to Lloyd Yard at the time of the events in question. The Settegast Yard and Lloyd Yard are separate and distinct "departure yards" or terminals. This conclusion is reinforced by their respective locations; they are "18" to "25" miles from each other.

The July 22, 1981 Agreement is of no support to the Organization. The preamble to the Agreement indicates that the Lloyd Yard was to be "a part of the Houston Terminal *** in the application of Rule 25(a)" and "Rule (3)" both of which apply to seniority. If there is any doubt about the purpose of the preamble, it is cleared up by Paragraph (1) of the 1981 Agreement which, in relevant part, provides:

"(1) Spring, Texas (Lloyd Yard) will be considered to be a part of the Houston Terminal seniority point so that carmen employed at Settegast and Spring will be on one seniority roster. ***"

Paragraph (1) indicates in clear terms that the parties intended to combine the two (2) points, namely Lloyd Yard and Settegast Yard for purposes of seniority and bidding rights. Had the parties in the 1981 Agreement intended to modify Article V, Section (a) of the 1964 Agreement, they would have stated as much in the preamble. However, they failed to do so but referred specifically to two (2) Rules both of which apply to seniority.

Article V, Section (a) of the 1964 Agreement remained intact with the execution of the 1981 Agreement. Under Section (a) Carmen are required to be on duty in the departure yard in order to perform the inspecting and testing of air brakes. Clearly, there were no Carmen on duty or employed at Lloyd Yard, the departure yard for Trains 814 and 815. Thus, there is no basis for the Organization's Claim under Article V, Section (a) of the 1964 Agreement.

Furthermore, Section C of the 1964 Agreement states that the Carrier may discontinue the use of Carmen to perform coupling, inspection and air testing where there is "not a sufficient amount of such work to justify employing a carman." Section (f) of the Agreement provides that where there is a "dispute as to whether or not there is sufficient work to justify employing a carman" a "joint check of the work done" at the request of the General Chairman shall be undertaken. No such "joint check" has been requested by the General Chairman.

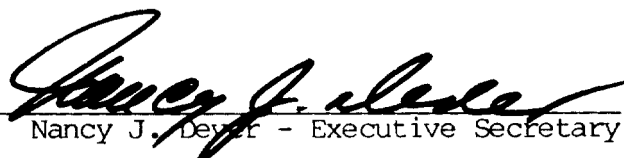
In light of the aforementioned considerations, the Board concludes that the Claim is to be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

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