Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11208
SECOND DIVISION Docket No. 11030-T
2-AT&SF-CM-'87

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employes:

1. That under the current Agreement the Carrier improperly instructed and used employes other than Carmen, namely trainmen, to couple air hoses, inspect and perform the air brake test on Train 3252 with 65 cars, which departed the San Diego yard at approximately 12:30 a.m. on August 28, 1983 thus violating Rules 36(a) and 98(a) of the September 1, 1974 Agreement as subsequently amended.

2. That accordingly the carrier be ordered to additionally compensate Carman M. S. Hyder in the amount of four (4) hours at the overtime 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 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.

As third party in interest, the United Transportation Union was advised of the pendancy of this case, but chose not to file a Submission with the Division.

Claimant is employed as a Carman by the Carrier at its San Diego, California facility. On August 28, 1983, a train was scheduled to depart the San Diego yard at about 12:30 A.M. The train crew inspected and tested the air brakes before the train's departure; there was no Car Inspector on duty at the time. The Organization thereafter filed a Claim on Claimant's behalf, charging that the Carrier improperly used employees other than Carmen to perform the air brake test. The Organization seeks compensation in the amount of four hours' pay at the overtime rate.

The Organization contends that under the Rules governing seniority and the Carmen's classification of work, Rules 36 and 98 of the Current Agreement, the disputed work clearly belongs to the Carmen's classification and should have been performed by Carmen. The Organization asserts that the Carrier arbitrarily chose to have Trainmen perform the work.

The Organization further argues that the Carrier violated Article V of the September 25, 1964, Agreement (as amended by Article VI of the December 4, 1975, Agreement) when it abolished the Car Inspector position at the San Diego yard and reassigned the affected Carmen to emergency work; Carrier told these Carmen that they no longer would couple, inspect, and test air brakes. Article V, as amended, states in part:

> "(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.
>
> . . . .
>
> (c) If as of July 1, 1974 a railroad had carmen assigned to a shift at a departure yard, coach yard or passenger terminal from which trains depart, who performed the work set forth in this rule, it may not discontinue the performance of such work by carmen on that shift and have employees other than carmen perform such work (and must restore the performance of such work by carmen if discontinued in the interim), unless there is not a sufficient amount of such work to justify employing a carman."

The Organization maintains that the work in question accrues to Carmen under the Rules; the Carrier improperly assigned it to other employees.

Finally, the Organization points out that on August 28, Carmen were on duty on the repair track and were assigned to perform line-of-road emergency work. The Organization asserts that it is established practice at the San Diego yard to use repair track employees to perform car inspectors' work in the yard as needed. The Organization therefore contends that the Claim should be sustained.

The Carrier contends that neither the Rules cited by the Organization nor any other Rules specify that the disputed work belongs exclusively to Carmen. The Carmen's classification of Work Rule governs mechanical inspection of air brake equipment in connections with repairs and maintenance. The Carrier asserts that this Board has held that classification of Work Rules identical to the one in the Current Agreement do not grant Carmen the exclusive right to make air brake tests and inspections in connection with the movement of trains by Trainmen as part of their work.

The Carrier also argues that the practice on this property has been that Carmen do not have the exclusive right to perform the disputed work; Trainmen have performed the work at locations where there is not enough such work to justify having a full-time Carman on duty. The Organization cited Rules 36 and 98 of the Current Agreement in its Claim; these Rules apply system-wide. The Carrier contends that the San Diego practice would be relevant only if the Organization had cited Article V of the September 25, 1964, Agreement in its Claim. Also, the Carrier points to the parties' bargaining history and past Board Awards to support its contention that Carmen historically have not had an exclusive right to the disputed work.

The Carrier also asserts that the Organization has recognized that the disputed work belongs to Carmen under certain conditions specified in Article V. Moreover, the Organization also has recognized that Article V is controlling, not Rules 36 and 98 of the Current Agreement. Article V was discussed during the handling of this Claim on the property, but the Carrier argues that Article V is not before this Board for consideration because the Organization did not mention the provision in its Notice of Intent to file a Submission. The Carrier therefore asserts that the Organization's allegations under Article V are irrelevant to this dispute.

The Carrier then argues that even if Article V were at issue, the Carrier would not be required to use emergency road crew Carmen to perform the disputed work. The Carrier admits that repair track Carmen have been used in the San Diego yard as Car Inspectors. The Carrier asserts, however, that there were no repair track Carmen at San Diego on the dates in question. The Carrier finally asserts that even if the Claim has merit, Claimant would not be entitled to eight hours' pay as compensation because it did not take eight hours to perform the work. The Carrier therefore argues that the Claim should be denied.

This Board has reviewed all of the evidence in this case, and we find that there is no evidence that the Claimant or any other Car Inspector was on duty at the time of the inspection. Moreover, there is no evidence that the work of the type in dispute contractually belongs to Carmen to the exclusion of all other crafts. Finally, there is evidence that on the property involved in this dispute, Carmen and Trainmen have both performed work of the nature involved in the instant case, i.e., coupling of air hoses and inspection of air brakes. Trainmen have customarily performed the necessary tests and inspections when Carmen are not assigned or are not on duty or where the volume of work does not warrant having a full-time Carman on duty in the train yard. Hence, there was no violation.

With respect to the Organization's Claim under Article V, the key words in Subsection "C" are "unless there is not a sufficient amount of such work to justify employing a Carman." The Carrier had determined that there is insufficient work and has abolished the Car Inspector job at the location involved; such action is fully within the Carrier's authority. This Board has received no evidence to support the Union's Claim that there is sufficient Car Inspector work to justify continuing to employ the Carmen.

It is true that there were Carmen available to be called to do the work. However, the record is clear that at the San Diego facility, because of the past practices of using other crafts to do the work, the Carrier was not in violation when it had employees other than Carmen performing air brake tests.

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 4th day of March 1987.

LABOR MEMBERS' DISSENTS
TO AWARDS
11208, 11209, 11210 and 11211
SECOND DIVISION DOCKETS
11030-T, 11050-T, 11052-T and 11053-T
REFEREE PETER R. MEYERS

The decisions in these Awards are based upon erroneous reasoning and are in conflict with the facts of record.

The Neutral in each of the Awards correctly found that there were carmen available to be called to perform the work in question and that repair track carmen have been used in the San Diego Yard as car inspectors; however, the Neutral then incorrectly found that the Carrier's action of abolishing the car inspecting positions at the location due to insufficient work under Article V, Section C, was within Carrier's authority. What the Neutral failed to recognize was that while Carrier may have been within its rights under the rule to abolish the car inspecting jobs at the location due to insufficient work, they did not have the right to assign the work in question to other employes since carmen were present in the yard.

This Board has consistently held that coupling, inspecting and testing of air brakes is the exclusive work of carmen where the following criteria has been met:

(1) Carmen in the employment of the Carrier 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.

On February 28, 1983, Award 11209, and on July 26, 1983, Award 11211, carmen were employed and on duty on the repair track; therefore,

the first criteria was met. The trains in question were in a departure yard or terminal, departed the departure yard or terminal, thereby meeting the second and third criteria. The fact that car inspectors were not on duty in the train yard did not establish that carmen were not available for the purposes of Article V since this Board, in Second Division Award 9932, clearly held that:

> "There is no question that Carmen are on duty and available in the Louisville Terminal. The Carrier states that at the East Louisville Yard there are no Carmen assigned. However, the Organization has shown to the Board's satisfaction that the East Louisville Yard is within the yard limits of the Louisville Terminal. The Organization's statement that Carmen are called for duty on occasion to the East Louisville Yard was not disputed."

In the disputes covered in Second Division Awards 11209 and 11211 carmen were employed and on duty and should have been used to perform the work.

The Neutral's decision that the Carrier was not in violation of the Agreement because of the past practices of using other crafts to do the work is totally erroneous and we most vigorously dissent.

R. A. Johnson

M. J. Cullen

Charles D. Easley

Norman D. Schwitalla

D. A. Hampton

CARRIER MEMBERS' ANSWER TO LABOR MEMBERS' DISSENT
TO
AWARD NOS. 11208, 11209, 11210, 11211
(DOCKETS 11030-T, 11050-T, 11052-T, 11053-T)
Referee Peter R. Meyers

The Dissenters do not dispute that the Carrier had the right to "abolish the car inspecting jobs at the location due to insufficient work". Yet, they contend that "the Neutral then incorrectly found that the Carrier's action of abolishing the car inspector positions at the location due to insufficient work under Article V, Section C, was within the Carrier's authority". (Page 1 of Dissent).

If the Dissenters wanted to challenge Carrier's determination of insufficient work, then Article V(f) provides and stipulates the procedure and the forum to address such an argument; and that forum IS NOT the Second Division, N.R.A.B. (Note Second Division Award 10242).

Further, as was noted in all of the Awards:

> "....the Carrier argues that Article V is not before this Board for consideration because the Organization did not mention the provision in its Notice of Intent to file a Submission." (Emphasis added)

Dissenters' contention is clearly misplaced.

While the Dissenters point to Second Division Award 9932 as support for a practice, these Awards (11208 - 10211) firmly point out that no such practice was substantiated in these disputes, and on this property, such work was not found to be exclusively reserved to the Carmen craft.

Second Division Awards 10252, 10399, 10467, 10518, 10591, 10742, 10764, 10823, 10866, 10876, 10884-85-86, 10956, 10959-60-61, 10977, 10996, 11021, 11023, 11033, 11039, 11059-63, 11088, 11093, 11202, have been rendered

in just the 15 month period prior to the adoption of these Awards involving the same basic issue. What was said in Second Division Award 6177 has cogent application here:

> "The Board confesses its bewilderment that the issues presented herein are before it for still another Award. The Board cannot formulate any reasonable explanation as to why this grievance was not shunted aside at some earlier point in the procedures for processing claimed violations of agreements in view of the body of Awards previously cited.
>
> "Repetitious readjudication of issues tends to damage and undermine the role of the Adjustment Board and the grievance procedure. It can have the ultimate consequences of eroding and casting into disrepute the vital functions of grievance processing which needs to be performed, namely, preservation of employe rights under the agreements and minimization of friction in the labor-management relationship."

Finally, Awards 11208-211 were adopted by the Second Division, NRAB, on March 4, 1987. This Dissent was filed with the Board on June 10, 1987, however, at that time one of the signatories to the Dissent was not an appointed member of Second Division. Therefore, the Dissent itself is improper and has been improperly filed.

P. V. Varga

M. W. Fingerhut

R. L. Hicks

M. C. Lesnik

J. E. Yost