

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company, hereinafter referred to as the Carrier, was in violation of the controlling agreement, particularly Rule 104 of the September 1, 1943 Agreement as subsequently amended, and Article V of the September 25, 1964 Agreement, when on November 25, 1983 trainmen were instructed to inspect and test the brakes on trains at Carrier's Kayne Avenue Yard, Nashville, Tennessee.

2. And accordingly, the Carrier should be ordered to compensate Carman L. P. Peach, hereinafter referred to as the Claimant for six (6) hours and thirty (30) minutes at the rate of time and one-half as the result of said 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 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.

As a Third Party in interest, the United Transportation Union was advised of the pendency of this case, but chose not to intervene.

November 25, 1983 was a holiday for most of the Carrier's employees. The dispute in question involves the Carrier's Kayne Avenue Yard, located approximately three to four miles from the Carrier's Nashville, Tennessee Terminal and Car Shop. No Carmen were assigned to the Kayne Avenue Yard on the shift in question, although Carmen were assigned to the two later shifts on that day.

On that day a run-through train (No. 591) came through the Kayne Avenue Yard. The Carrier acknowledges that engines were exchanged and that Trainmen, rather than Carmen, set and released the air brakes. Another train (No. 525) also arrived at the Kayne Ave. Yard that day, made a pickup of 41 cars, and the Trainmen set and released the air brakes on that train as well.

On January 19, 1984, the Organization filed a Claim contending that this work belonged to its members rather than to the Trainmen. The Carrier denied the Claim and it progressed to this Board.

Rule 104, the Classification of Work Rule for Carmen, states that "pipe and inspection work in connection with air brake equipment on freight cars" is under the jurisdiction of the Carmen. In addition, Article V of the Agreement states in relevant part:

"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 ... 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 asserts that Second Division Award No. 5368 establishes the standards for determining whether work is Carman's work. In order for Carmen to establish under Article V the right to perform certain work, they must show that:

1. Carmen in 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.

In the instant case the Carrier does not dispute that the trains in question were in a departure yard. The Carrier might dispute whether Train No. 591 could be considered "departing" from the Yard, since it was a run-through train. However there can be little dispute that Train No. 525 "departed" from the Yard, since it picked up 41 cars there, and therefore left as a different train than when it entered the Yard.

There are two remaining disputes in this case: 1) whether the trains were in fact tested, coupled, or inspected; and 2) whether Carmen were on duty. The Carrier's correspondence on the property states that no such activities occurred on these trains; that the only activity which occurred was that the brakes on the rear car of the second train were "applied and released," which is work Trainmen are permitted to do.

The Organization responded by stating that at least with regards to Train No. 525, which picked up 41 cars, the coupling of air hoses would have been necessary, which was clearly Carmen's work. The Organization made no argument about Train No. 591, and the Carrier did not respond to the Organization's argument regarding Train No. 525. Therefore the Board concludes that at least with respect to Train No. 525, the Trainmen did perform Carmen's work.

The core issue in this case is whether the Carmen were on duty. The Organization asserts that they were on duty at the Terminal several miles away. Article V gives the Carmen jurisdiction over work "in yards or terminals where carmen ... are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart." The Organization asserts that since Carmen were on duty in the Terminal at the time the work was performed, the work in the departure yard was Carman's work.

However, the Board concludes that the parties intended a more straightforward interpretation of Article V. That language requires that Carmen be on duty "in the departure yard ... or passenger terminal from which trains depart." (Emphasis added.) The trains in question here departed from the Kayne Yard. The Organization has not established that the Kayne Yard is part of the Nashville Terminal. Although the Organization has submitted evidence purportedly showing that Carmen from the main Terminal were assigned to work at the Kayne Yard, that evidence is inconclusive by itself to show that the Parties regarded the Kayne Yard as part of the Nashville Terminal.

Because the Organization has not established that the Kayne Yard is part of the Nashville Terminal, it has not established that Carmen were on duty in the Yard or Terminal from which the trains departed. Since the Organization is responsible for proving every element of its Claim, and since this is a major element of the Claim, the Organization has failed to prove its Claim. (Second Division Award No. 6893.) Therefore the Claim must be denied.

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 30th day of September 1987.