

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Boston and Maine Corporation

Dispute: Claim of Employees:

1. That the Boston and Maine Corporation (hereinafter referred to as the Carrier) violated Article V of the Agreement dated September 25, 1964, as amended on December 4, 1975, when Carrier arbitrarily assigned the work of coupling air hose, inspection and testing of air brakes on five (5) freight cars on Train ESDA on November 5, 1982, at the Carrier's departure yard No. 8, Boston, Massachusetts to other than those of the Carmen's Craft.

2. That accordingly, the Carrier be ordered to compensate Carman T. J. Hardy, (hereinafter referred to as the Claimant) four (4) hours at the Carman's straight time rate of pay due to violation of the current Agreement, namely Article VI of the Mediation Agreement - Case No. A-9699, dated December 4, 1975, on November 5, 1982.

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 third party in interest, the United Transportation Union was advised of the pendency of this case, and chose to file a Submission with the Division.

The Organization contends the Carrier's Yardmaster instructed the train crew of Train FSDA to couple air hose, inspect and test the cars and air brakes. The train consisted of two diesel locomotives (1741 and 1719), four freight cars, and one caboose. Car Inspectors were purportedly on duty at

Yard No. 8. The Organization argues these actions violate Article V of the September 25, 1964, Agreement as amended by Article VI of the December 4, 1975, Agreement. The Organization notes that, in determining whether or not a Claim under Article V is sustainable, certain criteria must be met. Citing Second Division Award 5368, the Organization points out the Board's criteria was:

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

The Organization argues it has met the criteria of Award 5368. The Carrier's Submission raises several factors which this Board must consider new arguments. First, it contends the Organization's facts are wrong and that the disputed work was, in fact, performed by a Carman. There is no evidence which suggests this was raised on the property. Carrier's Exhibit "H" was not exchanged on the property. Singularly, the Carrier's Director of Freight Car Maintenance, responding to the Claim, acknowledged that the train crew "performed their own air brake test on their pick ups."

Secondly, the Carrier, in its Submission, challenged the Organization's assertion of exclusivity of work rights and set forth a July 18, 1947, "Memorandum of Agreement" in support of its claim that Conductors and Trainmen perform the duties in question. Once again, this Board finds no evidence of record which establishes the Carrier raised this issue or presented the "Memorandum of Agreement" to the Organization in the on-the-property handling of this case.

Given the limited evidence properly before this Board, we must conclude a Carman was on duty and that coupling, inspection and testing of the train was performed by the train crew before it departed. Accordingly, we find the Claimant, not the train crew, was contractually entitled to perform the disputed work.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1987.