Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11386
Docket No. 11149-T
2-B&O-CM-'87

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, and claimants contractual rights under that agreement, when on the date of December 23, 1982 carrier abolished third shift car inspector's position at East St. Louis, Illinois and commenced to assign carmens' work to other classes of employes, in direct violation of Rule 144 1/2 of the controlling agreement.

2. That accordingly, Claimants J. Robbs, M. Haynes and C. Davis be compensated two (2) hours and forty (40) minutes pay at the time and one-half rate as per Employes' Exhibit "B", revised by Employes' Exhibit "R" as follows:

Claimant J. Robbs:	April 5, 17, 26, 30, 1984, May 3, 9, 21, 29, 1984, June 5, 12 and 27, 1984
Claimant M. Haynes:	April 11, 22, 27, 30, 1984, May 3, 14, 24, 30, 1984, June 6, 12, 1984
Claimant C. Davis:	April 16, 24, 29, 1984, May 3, 15, 26, 31, 1984, June 6, 26, 1984

That carrier be ordered to re-establish the car inspector's position, third shift, Cone Yard, East St. Louis, Illinois, claim continuing until resolved.

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 pendency of this case, but chose not to intervene.

This dispute arises from the Claimants' contention that, commencing April 5, 1984, Carrier violated Rule 144 1/2 when B&O or ICG Trainmen were permitted to couple air hoses and test their own brakes at Cone Yard. The Claim also seeks the reestablishment of the third shift car inspector's position at Cone Yard. This position had been abolished effective December 23, 1982 due to a decline in business.

The Organization maintains that after the third shift car inspector position was abolished, Trainmen were permitted on numerous occasions to couple hoses and test their own air brakes. In the Organization's view, this was work exclusively reserved to the Carmen's craft, and therefore, violative of Rule 144 1/2, which states as follows:

> "(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 employes 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 further asserts that while the third shift car inspector position may have been abolished in December of 1982 because of a decline in business, it is clear that there was a subsequent increase and improvement in business, and that sufficient work existed at the time the instant Claim was filed to justify the reemployment of a car inspector. In support thereof, the Organization points to the fact that Carrier returned a yard engine and crew to the third shift, demonstrating that there was work that could have been performed by a car inspector. Moreover, the Organization notes that Carrier reestablished the third trick Carman's position on September 6, 1984 because there was sufficient work to justify reestablishing that position.

Carrier argues that the work at issue has never been recognized as accruing exclusively to the Carmen's craft, and in view of the fact that there were no inspectors at East St. Louis at the time of the occurrences, the work was properly performed by the train crews. We agree.

The work of making air tests and coupling air hoses has been the subject of numerous decisions by this Board. It has been repeatedly held that such work may be performed by other than Carmen and is not reserved exclusively to the Carmen's craft. See Second Division Awards 11023, 11021, 10977,

10884, 10515, 10252, 10114, and 10021. Rule 144 1/2 was agreed to by the parties after many jurisdictional disputes concerning the coupling of air hoses and testing of air brakes, and reflects the fact that the performance of that work is reserved to Carmen only under certain specified circumstances, set forth as follows:

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

Clearly, all the criteria set forth in the Rule reserving to Carmen the right to perform such work were not met in the conditions alleged in the instant Claim, as there were no Carmen on duty on the dates claimed by the Organization.

The Organization has argued, however, that Carrier should not be permitted to circumvent the meaning and intention of Rule 144 1/2 by refusing to reestablish a Carman's position when sufficient work becomes available. We agree with that proposition in theory. Pursuant to Rule 144 1/2, paragraph (c), Carrier may not discontinue the performance of the disputed work by Carmen, unless there is not a sufficient amount of such work to justify employing a Carman.

From the record evidence before us, it is undisputed that the third shift car inspector position was originally abolished because of a decline in business. It is equally clear, however, that the Organization has failed to sustain its burden of proving that sufficient work existed to justify the assignment of a third shift car inspector during the period of the Claim. As the moving party herein, it is incumbent upon the Organization to prove every element of its case. See Second Division Awards 6369 and 6603. Here, the Organization has claimed only a minimum call of two hours and forty minutes for approximately thirty dates during the entire five month period of Claim. It has not shown that sufficient work existed to justify the Carman's position. The mere fact that Carrier subsequently reestablished the third trick Carman's position does not necessarily establish or prove that business had reached a level four months earlier, at the time that the Claim was filed, that would justify the reestablishment of the car inspector's position. Similarly, the fact that Carrier returned a yard engine and crew to the third shift does not show that sufficient work existed to justify the third trick car inspector position. Accordingly, we must find that the Organization failed to meet its burden of showing that a violation occurred on any of the Claim dates.

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 18th day of November 1987.