

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11515
Docket No. 11258-T
88-2-86-2-65

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

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Norfolk & Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk & Western Railway Company violated Rule 112 of the current Agreement and Article V of the September 25, 1964 Agreement when they improperly assigned brakemen to perform carmen's work of coupling, inspecting and testing in the Wentzville departure yard on specified dates in November and December, 1984.

2. That accordingly, the Norfolk & Western Railway Company be ordered to compensate the following carmen in the amount of eight (8) hours each at the time and one-half rate for the dates listed:

C. W. Cheek, December 14, 1984
F. B. Gotthardt, November 12 and December 17, 1984
M. Geragosian, December 18, 1984
L. L. Lewis, December 19, 1984
D. C. Garris, November 1, 1984
D. Mason, November 2, 1984
A. Standford, Jr., November 5, 1984
E. Smith, Jr., November 9, 1984
D. C. Hammerschmidt, November 13, 1984
L. L. Lewis, November 14, 1984
D. L. Gray, Jr., November 6, 1984
K. W. Logan, November 7, 1984
P. Oster, November 8, 1984.

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 dispute and did not file a Submission with the Division.

The Organization claimed that the Carrier had improperly assigned brakemen to perform carmen's work in violation of Rule 112 and Article V of the controlling agreement during specific dates in November and December of 1984. The Organization argued that the brakemen inspected and tested outbound trains prior to their departure and submitted numerous awards from the Second Division including 8448, 8602, 8767, 9932 and 10679. These awards developed the criteria for determining whether a violation occurred. They are as follows:

1. The carman must be on duty;
2. The work must be performed in the yard; and
3. The train must have departed the yard.

The Organization stated its Claims were timely filed and that the Carrier started making up trains at the yard in question during 1984. In any event, this is in the nature of a continuing violation and the Organization cited Award 8281 in support of that contention. The Organization noted the Carrier raised the timeliness issue for the first time in a letter dated July 18, 1985 from the Carrier's Assistant Director of Labor Relations.

The Carrier stated this facility was developed in conjunction with a new plant for General Motors during December, 1982, and since that time, the brakemen had performed the work in question. The claim was filed on December 19, 1984, and in accordance with Rule 31, the claim has not been timely filed. The Carrier noted the work was not hidden. Carmen have worked on adjacent tracks (Tracks 24 through 29 out of 31) for two years. The Carrier stated the timeliness issue can be raised at any time, and this is not in the nature of a continuing violation but occurred at the time that the work was assigned in 1982. The Carrier alleged that Rule 112 does not give exclusive rights to this work to the Carmen and noted that other points on the system are operated in exactly the same way.

The Board must dispose of the threshold issue if it is to move to the merits of this case. In a letter dated March 4, 1985, the Local Chairman stated in pertinent part "...to my knowledge, they didn't start making outbound trains up in the new Wentzville yards until some time in early 1984, but this has nothing to do with the time claim in question." The original claims were filed by the same Local Chairman on December 19 and 20, 1984. By any understanding of the concept of "early 1984" the Organization has not filed its Claims in a timely manner. To the Local Chairman's credit, he did have several meetings with Carrier Representatives trying to resolve this matter prior to filing this Claim; however, in accordance with the Rule, Claims must be filed within the 60 day period in order to protect the interest of the Organization. The Organization further argued that this was in the nature of a continuing violation. Each side submitted Awards favoring its

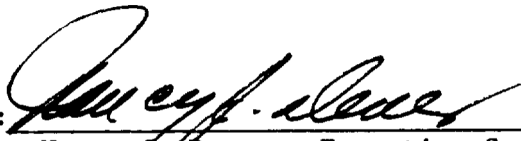
Interpretation. The Organization submitted Award 8281, and the Carrier has Awards 6854, 7571 and 7581. A reading of each of these prior awards would favor the Carrier's position that this is not in the nature of a continuing violation. In work assignment or work transfer cases, the prevailing opinion is that the violation occurs on the date of transfer or assignment, where the Organization was well aware of the work assignment. Therefore, the Board is unable to rule on the merits of this case and must uphold the contention of the Carrier that the Claims were untimely filed.

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 20th day of July 1988.