

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11594
Docket No. 11113-T
88-2-85-2-232

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

(Brotherhood Railway Carmen of the United States and
(Canada
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated the controlling Agreement, specifically Rule 144 1/2, when on the date of May 28, 1984, Carrier laid-in Car Inspector's position at Pit Yard, Hamilton, Ohio, Holiday, and further allowed train crew to perform Carmen's work, coupling air hose and air brake test.

2. That accordingly, carrier be ordered to compensate Claimant T. L. Burggraf for all time lost as a result of such violation: eight (8) hours pay, penalty time, at \$19.80 per hour, totaling \$158.40.

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.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant is employed as a Carman at its Pit Yard facility located at Hamilton, Ohio. At the time of the events giving rise to the instant dispute, Claimant held a regular assignment by bid on the first shift at the Carrier's Pit Yard facility. The record establishes that pursuant to the Agreement between the parties, the carmen, including Claimant, were not scheduled to work on May 28, 1984, which was a holiday. During the first shift, Yard Crew Job No. 3 at Pit Yard picked up eleven (11) cars, which had been previously coupled by the Car Inspector at Pit Yard on May 27, 1984, and moved them to an industrial site for placement. The Organization contends that the train crew performed carmen's work and that by assigning the train crew to perform such work, the Carrier violated Rule 144 1/2.

Rule 144 1/2 in relevant part, provides:

"(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."

In Second Division Award 10021, this Board, in relevant part, declared:

"The essence of Rule 144 1/2 in this case is that the work in question is reserved to carmen only when certain specific conditions prevail. The issue has been determined in a number of awards notably Second Division No. 5368, wherein the three specific conditions are 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."

None of the conditions referred to in Second Division Award 10021 is present in the instant case. Claimant as well as the other carmen, at the Carrier's Pit Yard facility were not on duty on May 28, 1984. Furthermore, the entire movement of the cut of cars on May 28 was within the Hamilton Terminal limits. Both Pit Yard and the industrial siding are located within the limits of the Carrier's Hamilton, Ohio Terminal.

Moreover, as Second Division Award 10021 points out, the term "train" as set forth in Rule 144 1/2:

"...refers to trains ready for departure from the terminal for over-the-road movement beyond terminal yard limits, not to intra-terminal movements between classification yards."

It is also significant that a cut of cars is involved in the instant case "...rather than a road train prepared and ready for departure from one of the yards for an over-the-road movement. Thus, the rule (Rule 144 1/2) refers to 'trains,' not cuts of cars." (Second Division Award 10021.)

The Organization states that the Carrier caused Claimant as well as other carmen not to be scheduled for service. Accordingly, the Organization contends that the Carrier should not benefit from preventing Claimant to satisfy a specific condition of Rule 144 1/2. Even if Claimant had been on duty on May 28, the other two (2) conditions set forth in Second Division Award 10021 would not have been satisfied to trigger the application of Rule 144 1/2.

In light of the aforementioned considerations, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1988.

