

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

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

STATEMENT OF CLAIM:

1. That the Western Maryland Railway Company knowingly and with total disregard of the existence and/or intent of Rule 93 of the controlling Agreement assigned the historic and contractual duties of Carman J. J. Kroboth to train crews at Hagerstown, Maryland on June 3, 1986. That these duties included the application of ground airlines to rolling stock. That the Carrier has deprived Claimant of his contractual rights as well as injured him monetarily to the degree of eight (8) hours at the straight time rate of compensation. The Organization has been deprived of its contractual rights guaranteed under Rule 93 of the controlling Agreement.

2. That accordingly, the Western Maryland Railway Company be ordered to award Carman J. J. Kroboth the amount equal to eight (8) hours compensation and the carman's straight time rate of pay for June 3, 1986 account Carrier knowingly violating Rule 93 of the controlling Agreement.

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.

There is no dispute in the record that at 7:20 A.M. on June 3, 1986, a train crew connected the head car to ground air in the West Yard at Hagerstown, Maryland. The Organization alleges Carrier violation of Rule 93, the Classification of Work Rule. The Organization asserts that the disputed work is protected by Agreement and has been historically and exclusively performed by Carmen system-wide.

The Carrier argues that applying and removing ground air has not been exclusively performed by Carmen. Carrier further asserts, by reference to

Award No. 66, Public Law Board No. 3290 (UTU & B&O), that trainmen are performing this incidental to the handling of trains throughout the system. Carrier additionally argues that there were no Carmen on duty at the time of the incident at bar.

As a Third Party of interest the United Transportation Union fully supported the Organization's position. It states that "...historically the application and removal of ground air on Western Maryland properties has been the exclusive duties of carmen."

This Board has fully considered the numerous issues raised by all of the parties in this dispute. There is nothing in Rule 93 that lists the disputed work as work belonging to Carmen. Assertions are not factual evidence and ex parte arguments by any party do not carry the burden of proof. There is a lack of probative evidence submitted by the Organization to prove that the Carrier violated the Agreement. In this record assertions of exclusivity are rebutted. The Board has reviewed Rule 106 of the Western Maryland Agreement which assigns the contested work to Carmen when they "are employed and are on duty" and finds no record of evidence sufficient to support the instant Claim. The record shows that no Carmen were on duty in the West Yard at Hagerstown at the time of this dispute. Aware that our decision is limited solely to the facts and circumstance of this case, 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 15th day of February 1989.