Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11690
Docket No. 11451-T
89-2-87-2-117

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

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

STATEMENT OF CLAIM:

1. Carman John J. Corio, Jr. was deprived of work and wages to which he was entitled when the Chicago and North Western Transportation Company violated Article V of the Agreement of September 25, 1964, as amended by Article VI of the December 4, 1975 Agreement, and Rules 15, 30, 58 and 76 of the controlling agreement when it improperly assigned other than Carmen to perform the work of coupling air hose and making terminal air brake test on the interchange delivery being made to the Colorado-Eastern Railroad and Iowa Interstate Railroad at Council Bluffs terminal on July 23, 1986 when carmen were on duty and available for duty.

2. Accordingly, Carman John J. Corio, Jr. is entitled to be compensated in the amount of four (4) hours pay at the straight time rate of pay, amounting to $52.84 for the violation of July 23, 1986.

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 dispute and did not file a Submission with the Division.

On July 23, 1986, the Employees allege that the Carrier permitted switchmen on Yard Job 04 at Council Bluffs, Iowa, to couple air hoses and make terminal air brake tests on twelve cars which were delivered by them in interchange to the Colorado, Eastern and Iowa Interstate Railroad. These cars were handled exclusively within the confines of the Council Bluffs switching limits. According to the Carrier, at the time this work was performed, Carmen were on duty at Council Bluffs, but were not available to perform this service.

On September 7, 1986, the Employees filed a grievance alleging that Claimant was deprived of work and wages when the Carrier permitted a Switchman to couple air hoses and make terminal brake tests on said day. The Claim was subsequently denied.

It is the position of the Carrier that the instant Claim is identical to the decision of this Board in Second Division Award 10107, which reads:

> "Organization also refers to Rule 124 which reads in pertinent part as follows: 'Carmen work shall consist of...air hose coupling in train yards and terminal...' While there is no question as to the content of Rule 124 outlining Carmen duties, it is equally clear that this must be read in conjunction with the 1964 and 1976 Agreements cited above.
>
> The language of the 1964 and 1976 Agreements has been the subject of many previous awards which determined whether or not Carmen were entitled to perform the type of work under consideration here. Accepted as three criteria supporting Carmen's claims are the following:
> 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. That the train involved departs the departure yard or terminal.
>
> The record before the Board in this instance demonstrates that the cars in question were in yard transfer, indicating that the third criterion is not met, and perhaps the second criterion as well."

According to the Carrier, the facts in the instant Claim do not satisfy those three criteria, either. The cars in question in this case were being transferred from one yard to another within the Council Bluffs Terminal. This is further supported by the fact the switchmen do not possess the contractual right to operate trains outside of the terminal under conditions such as those existing in the instant case.

The Employees argue, however, that the three aforementioned criteria, which they quote from Second Division Award 6827, have been met in this case. According to them, on said date, 1) Carmen in the employ of the Carrier were on duty in the departure yard, 2) the train in question was in the departure yard or terminal, and 3) the train departed the departure yard or terminal to make interchange deliveries to the Colorado, Eastern and Iowa Interstate Railroad. It is, therefore, their position that under the provisions of the September 25, 1964 Agreement, Article V., as amended by Article VI of the December 4, 1975 Agreement, the work involved in this dispute accrues exclusively to the Carmen, and that the Claimant was entitled to perform the work in question and should be compensated accordingly.

In arriving at a decision in this case, the Board referred to Second Division Award 10012, which reads:

> "The movement in this case was essentially a switching movement in moving a cut of cars from one classification yard to another. Clearly Rule 144 1/2 was not intended to cover such movements since the first sentence of rule limits application to yards where carmen are employed and 'on duty in the departure yard, coach yard or passenger terminal from which trains depart...' The rule applies to trains, not cuts of cars such as here involved, and, thus, we find the rule was not violated."

Second Division Award 6999 bears a close relation to the issues in this case as follows:

> "In interpreting Article V of the 1964 National Agreement, this Board has adhered to the three criteria enunicated in Award 5368. The third criterion in that Award was that the train involved departs the departure yard or terminal; Carmen must meet all three criteria in order to estabish a right to the work. In this case the cut of cars moved from one classification yard to another and did not depart yard or terminal. Hence, Petitioner did not prove that the criteria above were met."

We also quote from Second Division Award 5441, which bears especially upon switching movements within yard limits:

> "The Board is of the opinion that under the facts, and circumstances herein the work performed was a switching movement within the yards. Cars taken to the interchange were for the purpose of being made up rather than departing as required by Article V. Also all the work performed was done within the Knoxville Terminal limits. It further finds that the cars were not inspected mechanically or otherwise, or that the coupling or uncoupling of air hose is exclusively the work of Carmen in yards as described herein."

It is the opinion of this Board that the twelve cars in question were not covered as a "road train departing a departure yard or terminal." As such, the Employees have failed to establish that the particular work was solely carmen's work, or was in violation of the Agreement. The Claim therefore, is 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 22nd day of March 1989.