

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen
(Kansas City Southern Railway Company
(Louisiana and Arkansas Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Southern - Louisiana & Arkansas Railway Company violated the controlling agreement and the Railway Labor Act, as amended, when they used other than Carmen to couple air hoses, inspect cars and perform air tests on cars picked up at Harriett Street Yard in Shreveport, Louisiana on April 24, 1986.

2. That the Kansas City Southern - Louisiana & Arkansas Railway Company be required to compensate Carmen B. D. Thompson on a continuous basis for each day beginning on April 24, 1986. This claim is for eight (8) hours at the penalty rate (time and one-half) for each day until the violation stops.

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 filed a response with the Division.

The Organization contends that its Agreement, particularly Article V of the September 25, 1964 Agreement, was violated when Carrier, on April 14, 1986, allowed Switchmen to couple air hoses, inspect cars and perform air tests on cars picked up at Carrier's Shreveport, Louisiana, Harriet Street Yard. Harriet Street, previously used as a storage yard, is only minutes away from Carrier's Deramus Yard, another site within the Shreveport Terminal, where Carmen are on duty seven days a week, twenty-four hours a day.

The Carrier contends that three criteria must be met under Article V before it can be said that the work in dispute must be performed by Carmen. The work here involved was part of a transfer and not a departure as such. Thus one of the criteria of Article V is missing. Carrier also contends that Harriett Street is a Departure Yard at which no Carmen are assigned or on duty, the last position being eliminated in 1956, thus another Article V criterion is absent.

Article V provides in pertinent part:

"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 support of its position on the application of Article V the Organization relies upon a number of Second Division Awards including 5368, 8767, 10920 and 11287. The Carrier, in support of its position, relies on Second Division Awards 10021, 10252, 10515, 11093, 11203 and 11347. These Awards have considered a number of disputes concerning the application of Article V and developed standards for determining if the work under review here is reserved to Carmen. Several of these Awards have stated these standards to be:

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.

With regard to the above, the Awards also seem to require that Carmen not only be on duty within the terminal where the yard is located but actually on duty in the specific departure yard at the time of the incident. For example, in Second Division Award 8767, a decision relied on heavily by the Organization, the Board stated:

"The key to the dispute is whether Carmen were 'on duty' at the time of the incidents. Despite the Organization's reference to combined seniority rosters, the record shows that Carmen were not on duty at the Maumee Yard on March 15, 1978 at 5:45 p.m. or March 29 at 6:05 a.m., or at the Sumner Street Yard on April 15 at 3:30 a.m."

The above is consistent with what the Board said in Second Division Award 10515:

"Moreover, although the Organization argues that Ivorydale Yard is within the Cincinnati, Ohio, Terminal, it is clear that no Carmen have been assigned at Ivorydale Yard since the Carrier abolished all Carmen positions at that location on November 11, 1981, because of an insufficient amount of work."

And along the same vein the Board, in Second Division Award 11093, stated:

"This Board cannot conclude that both the Lloyd Yard and Settegast Yard constitutes a 'terminal' or 'departure yard' within the scope and meaning of Article V, Section (a) of the 1964 Agreement. The record discloses that no Carmen were on duty at the Lloyd Yard, the departure yard, where the train crews on Trains 814 and 815 performed the initial air brake tests. No Carmen were permanently assigned to Lloyd Yard at the time of the events in question. The Settegast Yard and Lloyd Yard are separate and distinct 'departure yards' or terminals."

In our judgment these Awards correctly apply Article V. Article V establishes two conditions with regard to Carmen being entitled such work. The first condition to be met is that Carmen must be employed in the service of the Carrier doing the work in the yard or terminal involved AND the second condition is that they must be on duty in the departure yard, coach yard or passenger terminal from which the train leaves.

In our case we have Carmen employed in the terminal, and we also have them on duty in another yard within the terminal, but we do not have Carmen on duty in the departure yard at the time of the incident. Accordingly, we are unable to find that the Agreement was violated in this instance.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1989.