

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12033
Docket No. 11635-T
91-2-88-2-130

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

(Brotherhood Railway Carmen/Division of TCU

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carmen W. Pugliese, W. Rauskauskas, J. Scott and J. Ericksen, were deprived of work and wages to which they were 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 assigned other than carmen to make an improper terminal air test at Proviso Terminal of Road Trains GBPRA, which departed April 7, 1987; PPROX, which departed on April 7, 1987; PPROX, which departed April 8, 1987; PPROX, which departed April 10, 1987; and PPROX, which departed on April 21, 1987, when carmen were on duty and available to perform such work.

2. Accordingly, Carmen W. Pugliese, W. Rauskauskas, J. Scott and J. Ericksen are each entitled to be compensated in the amount of eight (8) hours pay at the time and one-half rate.

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.

Claimants are carmen employed at the Carrier's Proviso, Illinois train yard. The Organization claims that the Carrier violated Article V of the Agreement, and thereby deprived the Claimants of wages to which they were entitled, when the Carrier did not use Claimants to test and inspect air brakes on certain trains on the dates set forth in the Claim. Because the Organization suggests that trainmen may have been used to perform carmen's work, the United Transportation Union was notified by the Board of the pendency of this dispute but declined the opportunity to present a submission.

Article V of the Agreement states, in pertinent part:

"Article V
COUPLING, INSPECTION AND TESTING

(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 carmen.

* * *

At locations referred to in Paragraphs (a), (c), (d) and (e) where Carmen were performing inspections and tests of air brakes and appurtenances on trains as of October 30, 1985, carmen shall continue to perform such inspections and tests and the related coupling of air, signal and steam hose incidental to such inspections and tests. At these locations, this work shall not be transferred to other crafts."

The Second Division has repeatedly interpreted this language to mean that any coupling and inspecting of air brakes, when performed, must be performed by carmen if the following three conditions are met:

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.

See, e.g., Second Division Awards 11347, 11203 and 8448.

However, in this case the Carrier argues that the testing of air brakes which the Organization claims on behalf of Claimants was not required to be done and in fact was not done by anyone on the Claim dates. In response to the Claim on the property, the Carrier asserted that Train GBPRA was an inbound train at Proviso, while Train PPROX was merely a run-through at Proviso on each of the Claim dates. The Organization disputed the Carrier's characterizations. In a letter dated August 27, 1987, to the Carrier's Division Manager, the Organization asserted:

"All of the above trains required inspection and testing in that the trains exceeded the time limits regarding initial terminal air tests. Also all the trains made pick-ups in Yard 9 of cars that had arrived previously in Yard 9 and were humped and brought back to Yard 9 in order for the Carrier to circumvent the requirements for testing, repair, and inspection of outbound trains."

The Organization later produced several pages of switch lists purporting to show that cars were added to the trains in question at Proviso on the Claim dates, thereby triggering the necessity for air tests. As the Organization stated in a letter to the Carrier dated February 8, 1988:

"Those exhibits are switch lists showing that switching was performed on the trains in question, and since the cars were humped and cars added to complete the train, inspection and testing was required. Furthermore, all trains departed the terminal on the dates for which claim was made."

The Carrier replied as follows in a letter of March 28, 1988, to the Organization's General Chairman:

"Attachment A-1, which you included with your letter of appeal, is not a train consist sheet for Train GBPRA, but rather is a switch list of a block of 70 cars that arrived on Train GCPRA. Since Train GBPRA did not depart Proviso as you indicated . . ., your facts are in error and your claim for this date is without merit.

Attachment B-1 is also a switch list for a block of ballast cars that was picked up enroute by Train PPROX. This train departs Pleasant Prairie, arrives at Proviso, where it changes crews and continues westward. Proviso is not an initial or final terminal for this train. Train PPROX merely picked up a block of ballast cars at Proviso while enroute. No requirement exists to make an initial and/or final terminal inspection of cars assigned to this train at Proviso and therefore, no violation of the carmen's scope rule exists on the remaining dates of claim."

Obviously, the Organization bears the burden of establishing that certain work, allegedly belonging to its members, was performed by others on the dates of the Claim. If no such work in fact was done, there can be no basis for the Claim. Having no proof that the disputed air tests were actually performed, the Organization relies on a series of assertions to give rise to a presumption. The Organization first contends that cars were added to the trains in question, and therefore the Carrier was required to perform air tests. Consequently, the Organization suggests that the Carrier must have used trainmen or others to do the tests.

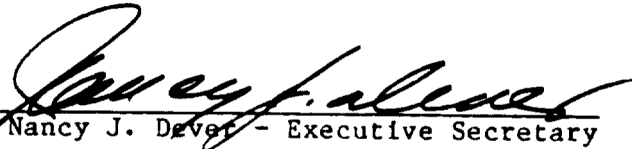
However, the Carrier effectively rebutted the Organization's argument. The Carrier denied that the disputed tests were performed, denied that such tests were required, and denied that the events transpired to require tests as the Organization had contended. Consequently, the critical facts are in dispute and the record will not support a conclusion that the work at issue in the Claim was performed at all. Since that conclusion cannot be drawn by the Board, the Board need not reach the issue whether such work in fact is reserved exclusively to carmen, and instead 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 1st day of May 1991.