Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12113
Docket No. 11892-T
91-2-90-2-17

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the September 1, 1974 Agreement as amended, specifically Rules 36(a) and 98(a); Article V of the September 25, 1964 Agreement, as amended by Article VI of the Mediation Agreement dated December 4, 1975; and, as further amended by Article VI of the Mediation Agreement dated November 19, 1986, by instructing, allowing and permitting other than Carmen to perform tests of air brakes and appurtenances, where Carmen were performing inspections and tests of air brakes and appurtenances on trains as of October 30, 1985, and where Carmen were available to perform such inspections and tests.

2. That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to additionally compensate Carmen E. A. Lewy and L. Branscum, each in the amount of four (4) hours at their applicable hourly rate of pay, for violation of December 7, 1988.

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 Submission with the Division.

The Organization contends that Carrier violated Rules 36(a) and 98(a) of the September 1, 1974 Agreement, at amended; Article V of the September 25, 1964 Agreement; Article VI of the December 4, 1975 Agreement and Article VI of the November 19, 1986 Agreement, when other than employees of the Carman Craft, specifically train crews performed tests of air brakes and other appurtenances on Train 1-991-07. It asserts that when said train arrived on track 401 at Bakersfield, California on December 7, 1988 at 10:05 A.M., and an additional locomotive was added at the head end of the train and a locomotive was added to the rear end of the train, the Assistant Trainmaster ordered the train crew to give the air test and the train departed from the yard. It maintains that under the above cited rules the work of inspecting and testing of air brakes on trains located in departure yards accrues to the Carman's craft and observes that Carmen at Bakersfield, California have performed this work on trains as of October 30, 1985 and for many years prior to this date. It cites Second Division Awards 5724, 5461, 5694, 5724, 5533, 5537, 5759, 8448, et al as supportive authority. In Second Division Award 5724, the Board held that under Article V of the September 25, 1964 Agreement, the work of coupling, inspecting and making brake tests on trains leaving a departure belongs to the Carman craft.

In rebuttal, Carrier contends that the work performed on Train 1-991-07 was merely a set and release of the air brakes and a reading of a gauge to determine whether the brake system was still working after the addition of the power of the two locomotives to the train. It notes this work was performed by train crew without the need to physically inspect any cars in the train and involved the movement of the train by train service employees. It distinquished this work from the performance of a mechanical inspection of air brake equipment in connection with car repair and maintenance and referenced Second Division Awards 3483 and 4397 as controlling. See also Second Division Awards 11211, 11422, 11423, and 11425.

In considering this case, the Board concurs with the Organization's position. Under the defining parameters of the arbitral cases cited by the parties and particularly under the clear language of Article V of the September 25, 1964 Agreement Carmen have the right to perform inspections and tests of air brakes and appurtenances on trains in a departure yard or terminal and, as such, the work performed by the train crew on Train 1-991-07 on December 7, 1988 violated the above Agreement. Since the facts in this dispute, namely that Carmen were on duty in a departure yard and the train tested departed from this location, comport foursquarely with the three conditions set forth in numerous Second Division Awards including Awards 11347, 11203 and 8848, the Board must find for the Organization.

On the other hand, the Board agrees with Carrier that the monetary remedy requested is excessive, since the Organization has not established how long the work actually took. We will award Claimants one (1) hour each at their applicable rate of pay.

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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1991.

CARRIER MEMBERS' DISSENT
TO
AWARD 12113, DOCKET 11892-T
(Referee Roukis)

The Majority has concluded in this case that:

> "In considering this case, the Board concurs with the Organization's position. Under the defining parameters of the arbitral cases cited by the parties and particularly under the clear language of Article V of the September 25, 1964 Agreement Carmen have the right to perform inspections and tests of air brakes and appurtenances on trains in a departure yard or terminal and, as such, the work performed by the train crew on Train 1-991-07 on December 7, 1988 violated the above Agreement. Since the facts in this dispute, namely that Carmen were on duty in a departure yard and the train tested departed from this location, comport foursquarely with the three conditions set forth in numerous Second Division Awards...the Board must find for the Organization."

The error in the above conclusion is that Bakersfield was not the DEPARTURE YARD for Train 1-991-07, but was an INTERMEDIATE POINT for that train. Carrier had pointed out this fact on the property without rebuttal. An intermediate point is not a departure yard and therefore does not:

> "...comport foursquarely with the three conditions set forth in numerous Second Division Awards..."

Second Division Awards 10823, 11493, 11689, 11691, 11695, 12033, 12036, 12041.

In Award 11493, the Board noted:

> "However, where, as here, the air test work is incidental to the pick up of cars by the road freight crew, such work is not reserved exclusively to Carmen. (Second Division Awards 10885, 10886). The fact that the location in this case is an intermediate point of the road crew's assignment is also an important consideration in the interpretation of Article V(a). In this regard, we agree with the opinion expressed in Award 10823 of this Division, and have applied its principles to the facts of this case." (Emphasis added)

Secondly, while we do agree with the Majority that the claim filed was excessive, it was pointed out on the property that the two claimants were on duty and that the work in dispute took less that fifteen (15) minutes. To award compensation eight times the actual time involved is still excessive and clearly was not warranted either by the facts of record or by the prior precedent of this Board.

We Dissent.

P. V. Varga

M. W. Fingerhut

R. L. Hicks

M. C. Lesnik

J. E. Yost