

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12913
Docket No. 12790
95-2-93-2-147

The Second Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union-Carmen Division
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That the Chesapeake and Ohio Railroad (sic) Company (CSX Transportation, Inc.) (hereinafter "Carrier") violated Rule 32(a), 154(a) and 179 1/2 of the Shop Craft's Agreement, Article VI, of the 1986 Mediation Agreement and CSXT Labor Agreement No. 16-48-92 Memorandum of Agreement between Transportation Communications International Union -- Carman's Division and Chesapeake and Ohio Railway Company (CSX Transportation, Inc.) when on August 28, 1992 the carrier assigned other than carmen work of performing air brake tests on train no. U-71226 with 146 cars that departed from Richmond Terminal.

2. That accordingly, the carrier be ordered to pay Carman D. E. Grissom, ID #628517, four (4) hours at the applicable straight time rate in accordance with the Shopcraft's Agreement, Rule 7(c) for said violation."

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 employee 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 were given due notice of hearing thereon.

As Third Party in Interest the United Transportation Union was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

On August 28, 1992 the train crew of Train U-71226 made the initial brake test in Fulton Yard, a part of the Richmond Terminal. The Organization filed the instant claim, arguing that the Carrier violated Rule 32(a), Rule 154(a), Rule 179 1/2 of the Schedule Agreement, Article VI of the November 19, 1986 National Agreement, and CSXT Agreement No. 16-48-92. The pertinent portions of the Agreements read as follows:

"Rule 32(a)-- (a) None but the mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.

Rule 154(a)-- (a) Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill cabinet and bench carpenter work, pattern and flask making all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint, (not including use of sand blast machine or removing vats); all other work generally recognized as painter work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspector, safety appliance and train car repairers; oxy-acetylene thermit and electric welding on work generally recognized as carmen's work and all other work generally recognized as carmen work.

Rule 179 1/2-- 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 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."

"Article VI-Coupling, Inspection and Testing of the November 19, 1986 National Agreement:

Article V of the September 25, 1964 Agreement, as amended by Article VI of the December 4, 1975 Agreement, is further amended to add the following

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."

"CSXT LABOR AGREEMENT NO. 16-48-92, MEMORANDUM OF AGREEMENT-- . . . to consolidate all Richmond, Virginia Terminal and line-of-road work in the Car Departments presently performed separately under the RF&P and C&O collective bargaining agreements into a coordinated operation under the C&O collective bargaining agreement;

2. All carman work for CSXT at Richmond and all carman work for RF&P at Richmond, including line-of-road work performed for the respective carriers, will be consolidated and thereafter performed on a coordinated basis under the C&O collective bargaining agreement...."

Acca Yard is the location where most of the Carrier's trains depart the Richmond Terminal. Carmen are employed and on duty at that location. Fulton Yard, some seven miles from Acca Yard, does not have carmen employed or on duty. In May 1992 all of the Carmen positions were coordinated at Acca Yard with all positions at Fulton Yard abolished.

From the record, it appears that the train crew did not perform a mechanical inspection, nor did it couple air hoses. The crew did perform an initial terminal air brake test.

The Carrier argues that for the Organization to prevail in this case it must show that mechanical work was performed by the train crew. This Board has held on numerous occasions that the work of testing air brakes is not work belonging exclusively to Carmen.

Article V of the September 25, 1964 National Agreement has been interpreted by numerous tribunals that for the Organization to prevail in cases such as this, it must prove that Carmen not only are on duty in the terminal where the departure yard is located, but they must be on duty in the departure yard.

In this case, while Carmen were on duty in another yard within the terminal, there were no carmen on duty in the departure yard at the time of the incident. The record is also void of any evidence that anything more than an initial terminal air brake test was made by the train crew. The Organization failed to meet its burden of proof that the Agreements were violated.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.