Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13431
Docket No. 13338
99-2-98-2-23

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen, Division of Transportation
(Communications International Union
(
(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Carrier violated Rule 144 ½, of the controlling Agreement, on December 12, 1996, at Willard, Ohio Transportation Yard when persons other than Carmen were instructed to perform the contractual duties of Carmen.

2. That the Carrier be ordered to pay Carman J. E. Perlman the amount of two (2) hours and forty (40) minutes at the time and one-half rate account violation of Rule 144 ½, of the controlling Agreement."

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.

In this pilot claim, a Wheeling and Lake Erie train crew, while in Carrier's yards, performed an inspection and initial terminal air brake test on cars destined for the Wheeling and Lake Erie that were on a track designated as the Wheeling and Lake Erie interchange track.

The Organization argues that Carmen were on duty and could have and should have been assigned to do this work.

The Carrier argues that the foreign line crew was on a designated interchange track and performed the disputed work on cars it was responsible for.

The Organization's response is that inasmuch as the interchange track was located on CSX property, it had control, and CSXT Carmen should have been assigned to do the work.

Both parties cited Awards purporting to support their respective arguments.

The Organization cited Second Division Awards 11790 and 12113, as well as Public Law Board No. 5225, Award 31.

After reviewing the three cited Awards, we note that none involved inspecting and initial terminal air brake testing by a foreign crew on a track designated as an interchange track for that specific Carrier.

In Public Law Board No. 5225, Award 31, the foreign line crew arrived in the Atchison, Topeka & Santa Fe Railway Company yards at Newton, Kansas, and proceeded to pick up and assemble its train on any track available, performed its own coupling, inspection and air brake test on the assembled train, and departed the yards for its own terminal.

The ATSF's defense in that case was that the receiving road had the right and responsibility to ensure the acceptability of the cars it received and to comply with government regulations.

The Organization responded by stating, in part:

". . . You also state that it is common by a receiving line to couple its own air hoses and make an air test.

This is where we differ. This would be permissible if there were no carmen available and would also be alright if there was an interchange track set aside for the CKRY.

You cited the BN interchange at Amarillo as an example, at Amarillo, Texas, there is an interchange track set aside for that purpose.

At Newton, there is no interchange track set aside for this purpose and the CKRY is picking up cars on all Santa Fe tracks. . . ." (Emphasis added)

Among the Awards cited by the Carrier is Second Division Award 12997, which is on all fours with the case now before the Board. Therein the Board held:

"This Board has evaluated the Carrier's denial of the claim. The Carrier asserted that the inspection was done by a foreign Carrier at the point of interchange. The Carrier stated without rebuttal that it was the foreign Carrier that had its train inspected before departure. While the Organization asserts that this work belongs to the Carmen, there is no probative evidence of record that would provide proof of Agreement violation. The facts demonstrate that East Binghamton Yard is an interchange point between the Carrier and the New York Susquehanna and Western Railway Company (NYSW). The record indicates that NYSW had its employees inspect their train prior to departure. The Carrier states without rebuttal that NYSW employees did air brake tests to determine defects prior to accepting the interchange.

The Board denies the claim as the train that departed the yard was not the Carrier's train, but that of the NYSW. As the Carrier did not control the train, it did not assign employees other than Carmen to do Carmen's work. The air brake testing performed was by the NYSW on its own train. Therefore the conditions to establish that this work belongs to Carmen under these instant circumstances have not been met."

The aforequoted covers the work done in this instance, and is on all fours with the Organization's position as set forth in Public Law Board No. 5225, Award 31, quoted earlier in this Award.

There has been no showing by the Organization that, in this instance, the Carrier violated any Agreement provision in effect on its property.

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 June 1999.