

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13442

Docket No. 13278

99-2-97-2-55

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

(Brotherhood Railway Carmen, Division of Transportation
(Communications International Union

PARTIES TO DISPUTE: (

(Alton & Southern Railway Company

STATEMENT OF CLAIM:

“1. That the Alton & Southern Railway company violated the provisions of the agreement, particularly but not limited to Rule 48 - Scope/Classification of Work when on May 1, 1996 it used a train crew to inspect and bleed the air on an inbound train instead of using a Carman who was on duty and had already been assigned to the work.

2. That, accordingly, the Carrier be ordered to compensate Carman Gary Stephens five (5) hours' pay at the straight time rate as provided in Rule 4(c) of the controlling Agreement for the violation that occurred.”

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.

The claim as outlined in the Statement of Claim of this case was filed by the Organization on May 13, 1996. The claim was denied by the Mechanical Superintendent and was therefore appealed by the Organization up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property it was docketed before the Second Division for final adjudication.

According to the Organization, on May 1, 1996 Carman Wilbert Hawkins was assigned to inspect and bleed off the air from each car on a Monsanto train before it was humped. Instead of the train being worked by the Carman, according to the claim, the Carrier "... instructed the train crew to bleed the air and inspect the cars and shove to the hump, which they did" This resulted in a violation of Rule 48 of the current Agreement, according to the claim. This Rule reads as follows, in pertinent part:

"Rule 48

Carmen's work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars ... (and) ... pipe and inspection work in connection with air brake equipment on freight cars"

In denying the claim at the first level the Carrier officer states that Carmen do not have exclusive rights to bleed air from cars and that Rule 48 does not mention this. Secondly, according to the denial of the claim, "... there is no record of an inspection ..." of the cars in question. The Mechanical Superintendent states that he queried Carman Wilbert Hawkins on whether he knew anything about the Monsanto train being inspected and bled on the day in question and that Hawkins told him that "... all he knew was (that) he was given a train ... to work but nothing was on that track (006 E)"

The Organization argues that there was no inspection report because the Carman who was supposed to have done the inspection and to have bled the brakes was never given the work to do in order to have filled out a report. The Organization does provide, however, a copy of an "Inbound Train Report" for the date of May 1, 1996 which was filled out by the Foreman which shows that the train crew bled off four cars on the Monsanto train on that date. Further, according to the Organization, it would be hard to believe that the cars were not inspected since they were most likely loaded with hazardous materials and it would be "... hard to believe (that) the company would make

such a dangerous move” With respect to whether Carmen have been in charge of bleeding air brakes the Organization argues that the language of Rule 48, cited in the foregoing in this Award for the record, which deals with the inspection of air brake equipment on freight cars has always meant on this property that Carmen do the air brake bleeding work. According to the Organization Carmen have “. . . bled off the air and performed the mechanical inspections on all inbound train for well over the past thirty years . . .” on this property and if train crews have from time to time done such work as the Carrier alleges, it was done “. . . without any knowledge of the Organization” Lastly, according to the Organization, a Memorandum of Agreement of March 11, 1966 between this Carrier and System Federation No. 154 of the Carmen clearly references bleeding of air brakes as part of Carmen responsibilities.

A review of the record warrants the conclusion that the air brakes on the four cars on the Monsanto train were bled by the train crew on the date of May 1, 1996. The Foreman’s Inbound Train Report for that date shows that. Nor is this denied by the Carrier. Secondly, the claim by the Organization is that the four cars were also inspected. While the Organization could not produce such inspection report by a Carman since the latter was not allowed to do an inspection, the Organization does argue credibly that for the Carrier not to have inspected the cars would have been dangerous in view of the likelihood that the cars contained hazardous materials. The Carrier’s silence on this matter further confirms the credibility of the Organization’s argument in this regard. The Organization as moving party has sufficiently borne its burden of proof in the instant case in accordance with standards of substantial evidence as they are normally understood in arbitral forums such as this.

A review of the language of Rule 48 further warrants the conclusion that the inspection work and bleeding of air brakes is work properly belonging to Carmen on this property. The Carrier never argues that inspection work does not belong to Carmen, but it does state that the bleeding of brakes has been done from time to time by train crews. The Organization denies the latter and states that in some 30 years bleeding of brakes has been Carman work on this property and that if other than Carmen have ever done such work it was without knowledge of the Organization. There is no response in the record from the Carrier with respect to this latter point.

Upon the record as a whole the Board concludes that there was a violation of the Agreement on May 1, 1996 when other than Carmen performed work on four cars from the Monsanto train which work properly accrued to the members of this Craft.

The issue of how long it would have taken to have done the work in dispute in this case is not clarified in the handling of this claim on property although from prior experience in these matters this Board has reason to believe that the length of time to have done the work was not extensive. Clearly it would not have taken five (5) hours and since Rule 4(c), while referenced, is nowhere cited for the Board in this case, the Board will not base any conclusions relative to relief on that rule.

The Board will award the Claimant two hours compensation at straight time rate because of the violation at bar.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 25th day of August 1999.