

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13724

Docket No. 13625

03-2-01-2-29

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen Division
(Transportation Communications International Union
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- (1) The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 2.1(a) and (b) when carrier ordered or otherwise assigned a supervisor to perform work belonging to the carman craft at East Deerfield, MA on December 3, 1999.
- (2) That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Henry J. Satrowsky in the amount of four (4) hours pay, at overtime rate. This is the amount he would have earned, if properly called.”

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 instant claim is one of four appealed by the Organization to protest the Carrier's use of Trainmaster Mark Galvis to inspect freight cars on four separate dates in the East Deerfield, Massachusetts, yard when Carmen were on duty and qualified to perform this work. This claim seeks compensation for the Claimant for work performed by Galvis on the morning of December 3, 1999, the Claimant's rest day.

During the processing of the claims on the property, the Organization asserted that Galvis performed inspection work, which is specifically protected under Rule 2.1(b), Classification of Work for Carmen. After the Carrier denied that Galvis performed inspection work on the date in issue, but admitted that he did bleed off freight cars on that occasion, the Organization enlarged its argument to include the fact that bleeding off freights cars, as well as their inspection, were traditionally performed by Carmen and protected to them under agreement language and past practice. The Carrier consistently denied that bleeding off cars was restricted to performance by any one class of employee, noting that many classifications of employees and supervisors have bled off cars at this location in the past.

In response to the Carrier's characterization of the Organization's claim as being without any proof, on April 6, 2001 the Organization submitted two handwritten statements from Carmen, dated October 17, 2000, referencing a conversation that occurred in the East Deerfield Yard office during August 2000, where one employee asked Galvis if he inspected or looked at the cars when he bleeds them off, and Galvis allegedly replied "Of course I look at the cars and if I saw a defect I would shop the car." The Carrier submitted a statement from Galvis in response, dated July 20, 2001, which states that historically employees and managers have bled trains on this property. Galvis states "During the course of this work I do not give these cars a complete inspection. However, I will not turn my head for a blatant safety default." Galvis goes on to state that cars are given a complete inspection by Carmen on the outbound test after they have been bled.

On September 25, 2001, the Organization presented two additional undated statements from Carmen attesting to the fact that Carmen have always done the inbound inspections and bled off the cars to be switched at this yard. One Carman states that they were told by supervisors only to do air tests on the outbound train, not inspections. The other statement, signed by 5 Carmen, notes that they also do a "predeparture inspection and Terminal Air Test."

The Organization contends that Rule 2.1 (a) and (b) specifically reserves the work of inspecting cars and testing brakes to their Craft, and that Galvis' performance of the work of bleeding off cars and inspecting them violates both the Agreement and proven historical practice on the property. See, Second Division Award 13442. It notes that supervisors are only supposed to do supervisory functions, not craft work, citing Second Division Award 12287, and argues that the Carrier's admission that Galvis bled off the cars violates this prohibition.

The Carrier argues that the Organization's claim rests solely on assertions, and no direct evidence, which is insufficient to meet its burden of proof, citing Second Division Awards 12111, 12651, 13187, 13199, 13680. It notes that the employee statements relied upon were not submitted until 15 months after the claim was filed and five months after it was conferenced, and relates to an alleged conversation months earlier involving work performed seven months before by Galvis. The Carrier avers that the statements do not specify dates of work or actual freight trains involved, and do not lend support to the allegation that Galvis inspected freight train WJED on December 3, 1999.

The Carrier also contends that bleeding cars, which requires only the release of a brake cylinder valve, is not the same as an inspection, and that there is evidence establishing that such work was not exclusively performed by Carmen on this property or reserved to them by the Agreement. The Carrier points to the absence of any proof that on duty Carmen did not perform the inspection work in question, pointing to employee statements confirming its contention that inspections are performed on outbound trains after they have been bled off. The Carrier asserts that all employees are responsible for reporting any defects or problems they see, and that Galvis' statement that he would have reported a defect he saw when bleeding a train is not the same as finding that he inspected the trains.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proving a violation of the Agreement in this case. We first note that there is no dispute between the parties that inspection work is properly the province of the Carmen craft under the terms Rule 2 of the Agreement. The first question in this case is whether the Organization has provided substantial evidence that Trainmaster Galvis, in fact, performed inspection work on December 3, 1999 on freight train WJED. Even relying upon the two employee statements submitted concerning a conversation with Galvis in August 2000, some seven months after the alleged violation, there is no direct proof that the subject matter of the conversation was any specific

work, let alone the job encompassed by the instant claim. The Organization offered no inspection logs or work reports covering the date in issue, observations by Carmen admittedly at work at the time, or a claim alleging that the Carrier blanked a Carman position on that date. In fact, the evidence submitted by the Organization supports the Carrier's assertion that Carmen do inspections on outbound trains after they have been bled off and switched, which might explain what could have occurred in this case. In any event, Galvis' statement that he would have reported a blatant defect if he had seen one, does not amount to an admission that he performed inspection work.

Additionally, the Organization asserts that the Carrier's admission that Galvis bled off the freight cars is sufficient to prove a violation of the Agreement, as Carmen have historically performed this work. Since the Carrier disputed this contention with direct evidence, e.g., Galvis' written statement that bleeding off was done by many classes of employees and managers on this property, the Board must conclude that the Organization failed to meet its burden of proving a past and historical practice concerning bleeding off cars. Unlike inspection work, the work of bleeding off cars is not specifically covered under the Classification of Work Rule of the Agreement, which differentiates this case from Second Division Award 13442. Nor does the record support the conclusion that this work is normally considered to belong to Carmen, as was the case in Second Division Award 12887. Absent uncontroverted evidence of the existence and violation of an established historical practice on this property, the claim must fail. See, e.g., Second Division Awards 12111 and 13199 et. al.

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 10th day of June 2003.