

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 13837

Docket No. 13693

05-2-03-2-18

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division of TCU  
(Grand Trunk Western Railway Company  
(Division of CN Railway)

STATEMENT OF CLAIM:

- “1. The Grand Trunk Western Railway Company (Division of CN Railway) violated the terms of our current Agreement, in particular Rule 105 and the November 19, 1986 National Agreement (Article IV-Coupling, Inspecting and Testing) at Flint, Michigan when they arbitrarily denied Carman R. E. Bush the right and privilege to work his regular assignment and instead assigned Train Crew 391 to perform this work on December 25, 2001.
2. That, accordingly, the Grand Trunk Western Railway Company be ordered to compensate Carman R. E. Bush in the amount of eight (8) hours at the time and one-half rate. This is the amount he would have earned had the Carrier not cancelled this 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.

The Carrier posted notice referring to the two day holiday of December 24 and 25, 2001. By notice, the Claimant's assignment on December 25, 2001 was cancelled. The Claimant did not work the train yard that date. At 10:37 p.m., December 25, 2001, Train Crew 391 performed the Initial Terminal Air Brake Test on three cars located in Flint Yard on Track 9.

The Organization points to the pertinent language of Article VI of the November 19, 1986 National Agreement which states:

"Carmen will continue to perform such inspections and tests and the related coupling of air, signal and steam hoses incidental to such inspections and tests. At these locations this work shall not be transferred to other crafts."

It also points to Rule 105, the Classification of Work Rule that states:

"Carmen's work shall include . . . the coupling of air. . . hose in yards . . . testing and inspection of air brakes and appurtenances on all trains as required by Carrier . . ."

It is the Organization's position that the Carrier permitted Train Crew 391 to perform work that belonged to the Claimant in violation of the Agreements, supra. As the work belonged to the Carman Craft as supported by numerous Awards, the Claim at bar is proper.

The Carrier denied the claim, but there is little discussion on property by either party. The Carrier asserted that the Claimant was the last Carman on duty

December 24, 2001, and that he went home without testing the cars, which were "on the track ready to be tested." It further argued that the disputed work was not exclusive to Carmen in that "an initial terminal air brake test can be performed by train crews, supervision . . ." and others. The Carrier points out that no Carmen were on duty.

The Organization states that it does not "agree with your stated reasons for this denial." The Organization points to Second Division Award No. 11790 and maintains that the Carrier allowed others to perform Carmen's work.

The Board has carefully considered this dispute and finds that Carmen were not on duty because the Carrier blanked the Claimant's assignment for the Christmas Holiday, December 25, 2001. While there is little in this record, it is clear that the work performed was the initial terminal air brake test. This is work covered by Rule 105 and work that; "Carmen will continue to perform," as listed in Article VI, supra. Given the state of this record, the work performed was Carmen's work and the Agreement was violated.

The Carrier on-property argued that the claim was excessive. We have reviewed the work performed and find that it is only the assignment to Train Crew 391 by Train Master Grantham of the Initial Terminal Air Brake test on cars TTGX 9994572; TTGX 978571; and ETTX 803530, on Track 9, in the South Yard.

The Organization and Carrier have provided this Board with many Awards. The Organization's reliance on Second Division Award No. 11790 is misplaced. In that Award, the Board sustained the claim, when, as here, the Carrier blanked the position and then with no Carmen on duty assigned others to perform Carmen's work. However, while we agree with that part of the finding indicating that it was Carman's work, the issue in Award 11790 is with two trains, in which the crews coupled air hoses, inspected cars and made brake tests that the Board held was of unknown time, but worthy of eight hours as requested. This is similar to other Awards which also awarded compensation for Carmen's work performed on a holiday while the Carman was blanked, such as Second Division Award 10117, with two large trains or Second Division Award No. 10920, where the work performed was viewed as "substantial."

In this instant case, there was only an initial terminal air brake test on three cars. The Board finds this more analogous to Second Division Award 13510, which involved about thirty minutes of work in which that Board found, "reasonably falls under what abundant arbitral precedent in this industry calls the de minimis doctrine."

Accordingly, while Carrier violated the Agreement, the Board holds that the amount of work indicated in this record would not accord payment to the Claimant. There is no showing that the work performed by the train crew on Christmas Day in this claim was anything other than *de minimis*.

**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 1st day of April 2005.