Award No. 5341
Docket No. 5110
2-MP-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated Article V of the Agreement of September 25, 1964 when other than carmen inspected, coupled hose and made brake test on train leaving the Missouri Pacific Railroad Company's departure yard about 2:40 P. M., March 29, 1965, Dupo, Illinois.

2. That accordingly, the Missouri Pacific Railroad Company compensate Carman M. P. Kalbfleisch and Carman W. Leyerle, who were working on the adjacent track, in the amount of one (1) hour each for March 29, 1965.

EMPLOYES' STATEMENT OF FACTS: Dupo, Illinois is a terminal point on the Missouri Pacific Railroad, hereinafter referred to as the Carrier, where, among other things, trains are regularly made up, inspected and dispatched. Carmen are regularly employed and assigned in the terminal as Car Inspectors, with assigned duties of inspecting, coupling air hose and testing brakes on trains made up in the terminal prior to their departure.

At about 2:40 P. M. on March 29, 1965, a train consisting of a locomotive, several cars and a caboose, was made up in Dupo Departure Yard A for dispatchment to Columbia Rock Quarry, Columbia, Illinois, which is located approximately seven (7) miles from the Dupo Yard limits. The inspection, coupling of air hose and testing of brakes on said train, which is required by carrier prior to its departure, was performed by the Train Crew.

Carmen M. P. Kalbfleisch and W. Leyerle, hereinafter referred to as claimants, are regularly employed as such by the carrier at Dupo, and on the date in question and at the time said work was performed by the Train Crew, were working in a track adjacent to the track on which the Columbia Rock Quarry Train was made up for departure to Columbia, Illinois.

Paragraph 2 of Employes' Statement of Claim requests your Board to order the Carrier to pay two carmen at Dupo who were on duty at the time of the incident in question one hour's pay each at the pro rata rate. Article V of the Agreement of September 25, 1964, upon which the Employes rely, does not provide for any such payment. Nor does any other rule in the Agreement provide for such a payment. No explanation has been offered for the claim of one hour for each claimant. As previously stated, claimants were on duty and under pay at the time the yard crew coupled the car. Consequently, claimants could not have possibly suffered any loss of pay. Your Board has denied penalty claims under such circumstances many times. For example, your Board denied a penalty claim in Award 3967 with the assistance of Referee Johnson where the agreement did not provide for any arbitrary or penalty and no pecuniary loss or damage to the claimants was shown. See also Third Division Award 13958.

We then come to the inescapable conclusion that the penalty claim stated in paragraph 2 of the Employes' Statement of Claim must be denied in any event. Your Board need not come to a consideration of this point, however, since the claim must be denied on its merits.

All matters contained herein have been the subject matter of correspondence and/or conference.

Oral hearing is not requested.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Carrier argues that two criteria must be met "before hose coupling becomes carmen's work" under Article V of the Agreement. They are:

"(1) a 'train' must be involved; and

(2) the hose coupling work must be 'related' to an inspection of the air brakes and appurtenances on the 'train'."

Specifically, it is the position of the Employes that the Carrier violated Article V of the September 25, 1964 Agreement. The pertinent part of that Article reads:

"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 the 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."

Employes admit "the word 'train' is a broad and all inclusive term and it was clearly understood by the parties to the agreement that it covered all trains made up in the yard **for movement outside yard limits.**" (Emphasis ours.)

Carrier says that the "Employes have the correct principle", but that under railroad terminology, "Article V applies to trains made up in a departure yard at the initial terminal which is manned by a road crew issued train orders or clearances for movement in road service outside of yard limits to a final terminal or turn around point." More emphatically, the nub of Carrier's argument is that Article V applies to road trains only, and that the cars handled at the quarry did not constitute a "train" within the meaning of said Article V. For that purpose, Carrier says that the quarry is within switching limits, and that the switching was done by a yard crew and not by a road crew.

Article V makes no such sharp distinction as urged by the Carrier. A departure yard is any yard where trains are made up and cars are coupled and inspected whether they are destined for road service or for industry switching outside the yard limits. Carrier admits that the Columbia Quarry "is located adjacent to the yard at Dupo." Nowhere does the Carrier specifically deny that the Columbia Rock Quarry "is located approximately seven (7) miles from the Dupo Yard limits." The Carrier says only that the fact that the industry lead is six or seven miles long is unimportant. It is important, however, to give meaning and intent to Article V.

The parties negotiated Article V on the basis of a recommendation made by Emergency Board No. 160. That Board recommended, in part, the adoption of the following rules:

> "In yards or terminals where carmen are employed and are on duty at or in the immediate vicinity of the departure tracks **where road trains are made up,** the inspecting and testing of air brakes and appurtenances of **road trains,** and the related coupling of air, signal and steam hoses incidental to such inspections, shall be performed by carmen." (Emphasis ours.)

Reference to "road trains" does not appear in Article V. It was deleted in negotiations by agreement of the parties. The connotation to "road train" has a particular significance. It cannot now be said that "train" as used in Article V refers only to a "road train" which alone is required to display markers or travel under train orders. If the parties had this intent, they would have adopted the Emergency Board's recommendation and they would have confined carmen work to road trains only.

Employes allege that the "inspection, coupling of air hose and testing of brakes on said trains, which is required by carrier prior to its departure, was performed by the Train Crew." This is not categorically denied by the Carrier. In its Ex Parte Submission, the Carrier says:

"After picking up the cars, the switch crew applied the brakes in order that they could see and know that they had brakes on the cut of cars prior to ascending the grade to the quarry."

This is certainly "inspection" within the meaning of that term. The quarry is up a steep ascending grade. Certainly, the Carrier made sure that the brakes were adequate for the journey. It is reason enough for the "inspection."

Furthermore, and more important, is the fact that the Carrier declined the claim on the property solely because a yard crew moved the train and that Article V applies to road trains only.

On June 22, 1965, Carrier wrote to the Vice General Chairman, in part, as follows:

"On the date of claim, **the yardmen assigned to the 8:00 A. M. utility job were instructed to couple air and to see and know that they have brakes in handling cars for a quarry located within switching limits of the Dupo yard.** This was a yard move handled by a yard crew.

Article V of the Agreement of September 25, 1964, which you cite, applies to road trains only. For that reason, the claim is not supported by the agreement, and is respectfully declined."
(Emphasis ours.)

Again, on August 9, 1965, the Carrier wrote to the General Chairman, in part, as follows:

"During the conference you contended that the cars being handled to the quarry constitute a 'train' and that the 'train' departed from the departure yard at Dupo by reason of moving the cars to the quarry, which is located at the end of a track branching off the main track a short distance south of the lead to the yard tracks.

The quarry is an industry adjacent to the Dupo yard, which is switched by yard crews and which is within switching limits. The fact that the quarry is a short distance from the yard and the track to the quarry ascends a grade making it necessary to have air on the cars does not alter the fact that the move in question is simply switching an industry by a yard crew.

The decision given you in our letter of June 22 declining the claim is affirmed."

There is adequate evidence in the record that the coupling of the hose was related to an inspection of the air brakes.

The two Claimants were on duty at the Dupo yard during the hour for which claim is made. Carrier argues that since no rule in the Agreement provides for payment where no pecuniary loss or damage is shown, the penalty claim should be denied. Carrier violated Article V of the Agreement. If no penalty is assessed for that violation, it is an invitation to the Carrier to continue to violate it with impunity. The explicit provisions of Article V

could become meaningless in similar situations. This is, clearly, not the purpose of any agreement. A penalty in the amount requested here is just and proper.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1968.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.