Award No. 5367
Docket No. 5228
2-MP-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

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

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 9:45 A. M., November 4, 1965, 21st Street Yards, St. Louis, Missouri.

2. That accordingly, the Missouri Pacific Railroad Company compensate Carman G. McClearn in the amount of two hours forty minutes (2 hours, 40 minutes) at punitive rate for November 4, 1965.

EMPLOYES' STATEMENT OF FACTS: At St. Louis, Missouri, the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, has what is known as the Lesperance Street Yard from which trains depart and also what is known as the 21st Street Yard from which trains depart. This case involves violation at 21st Street Yard, St. Louis, Missouri.

On November 4, 1965, about 9:45 A. M. transfer train was made up at 21st Street Yard. This train consisted of engine, forty-eight (48) cars and a caboose, and after the mechanical inspection, which is required by the Carrier under their rules and under the provisions of the Power Brake Law, by other than carmen, the engine was placed on these 48 cars and caboose and this transfer train then departed for East St. Louis, Illinois, which is across the Mississippi River via McArthur Bridge, and from East St. Louis this train continued to its destination of Valley Junction, Illinois where this transfer train delivered these 48 cars to the Illinois Central Railroad .

This mechanical inspection, which as stated above is required by the Carrier and Power Brake Law, was made by other than carmen in the 21st Street Yard, St. Louis, Missouri, where carmen were on duty on the adjacent track.

work of carmen, in the absence of specific agreement, when it is performed in connection with and incidental to their regular duties of inspection and repair. Awards 32, 457, 1333, 1370, 1372, 1554, 1626, 1766. Where the work is done in connection with switching operations, the carrier may properly assign the work to switchmen. Award 1554."

These awards on this property require a denial of the instant dispute. The same result has been reached on other railroads in more recent awards. See Awards 3091, 3339, 3652, 4145, 4215, 4239, 4287, 4446, 4565 and 4648.

Since the right to couple air and make brake test has not been contracted exclusively to carmen, it is apparent there is no merit to the claim and the claim must be denied.

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.

Claimant contends Carrier violated Article V of the Agreement of September 25, 1964 on November 4, 1965 when Carrier permitted the switch crew to inspect, couple air hose, and test the brakes on a transfer train consisting of an engine, forty-eight (48) cars and a caboose. This transfer train was made up at the 21st Street Yard in St. Louis, Missouri and after the work complained of was performed, it proceeded across the Mississippi River via the McArthur Bridge to the interchange with the Illinois Central located in East St. Louis, Illinois. Carmen were on duty in the 21st Street Yard where the train was made up.

The parties to this dispute are in substantial agreement as to the facts giving rise to this dispute. Therefore, the issue involved herein is the interpretation of Article V of the Sept. 25, 1964 Agreement. Article V of said agreement is:

"ARTICLE V.

COUPLING, INSPECTION AND TESTING

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.

This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a 'double-over' and the first car standing in the track upon which the outbound train is made up."

This Board finds that carmen were in the service of the Carrier in the yard and on the date in question; that Carrier required and permitted the train to be inspected, coupled and tested by a craft other than that of carmen; that the train departed the yard; and that because of the number of cars in the train (48), the exceptions contained in the second paragraph of Article V do not apply in this case.

There is nothing ambiguous in the language of Article V. Carrier has contended that the intent of Article V in restricting the work in question to Carmen pertains only to road trains. In support of this contention, Carrier has cited the recommendation of Emergency Board 160. Evidently, the recommendation as applicable to road trains was deleted by subsequent negotiation. Article V of the Agreement, as subscribed to by the parties of this dispute, is nonrestrictive as to the type of train subjected to the said Article V.

Carrier has cited Award 4971 (Johnson) and 5192 (Weston) for support. We do not overrule these Awards, but do find that they are distinguished from the instant dispute. In Award 4971 carmen were not on duty in the departure yard on the dates trainmen performed carmen duties; Award 5192 was denied because of lack of proof of necessary facts.

For the reasons above set out, we find that Article V of the agreement herein was violated as alleged in employes' claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1968.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 5367

This is clearly an erroneous award —

1. Nowhere in the record did the employes offer any proof that a train was involved as contemplated by Article V. The first paragraph of Article V refers to yards or terminals "from which trains

depart" and to "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, * * *." The record shows that a yard crew coupled the air hose between **a cut of cars.**

2. Nowhere in the record did the employes offer any proof that the switch crew made a "mechanical inspection" as that term is used in the railroad industry; they merely made a brake test.

3. We agree with the majority when it states — "There is nothing ambiguous in the language of Article V." The majority also states: "Carrier has cited Award 4971 (Johnson) and 5192 (Weston) for support." This is true; however, carrier also cited Award No. 5320 (Johnson) — among others — for support and for reasons best known to the majority it saw fit to refrain from mentioning Award 5320 and to completely ignore it. Award 5320 upheld the carrier's position in a like dispute. By conveniently ignoring Award 5320 — which was directly in point in this case — the majority left unanswered many significant questions in sustaining the instant claim.

For these reasons, we dissent.

H. F. M. Braidwood
F. P. Butler
H. K. Hagerman
W. R. Harris
P. R. Humphreys

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