

 Award No. 5460
Docket No. 5150
2-GM&O-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier improperly assigned other than Carmen to make air brake inspections and tests, and couple air hose in connection with such tests at Corinth, Mississippi on July 5, 1965.
2. That accordingly, the Carrier be ordered to additionally compensate Carman G. N. Steen in the amount of four (4) hours at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad, hereinafter referred to as the Carrier, maintains a train yard at Corinth, Mississippi where Carmen are assigned twenty-four hours each day, seven days per week to give inspections to inbound trains and to give air brake inspections and tests, and couple air hose in connection with such tests on outbound trains.

Carman G. N. Steen, hereinafter referred to as the Claimant, is regularly assigned in this train yard. His work week is Sunday through Thursday.

Monday, July 5, 1965, was observed as Fourth of July under provisions of the current agreement. On June 28, 1965, Carrier posted a bulletin notifying that no jobs would work unless the employee was called or notified. Copy of this notice is attached hereto and identified as Employees' Exhibit A.

At or around 11:00 P. M. to 12:00 Midnight on July 5, 1965, Switchman Ike Ayers made air brake inspection on fourteen cars of Train No. 152 after coupling the air hose on same. He made air brake test and inspection on approximately twenty-seven cars on train departing for the C&C Railroad, and I. C. Railroad after coupling air hose between the cars. The Claimant was available to be used for this work.

departure yard at the time these deliveries depart, nor is their statement correct that they performed this work exclusively at Corinth prior to the effective date of that Agreement.

There seems to be considerable confusion and misunderstanding among the employees as to the intent and meaning of Article V of the September 25, 1964 Agreement. The Employees apparently are under the impression that it is similar to a scope rule in which rule the work referred to is Carmen's work under any and all circumstances. But this is not true. In reality, Article V gives the inspection, testing and related coupling of air hose to Carmen under certain circumstances. The Brotherhood of Railway Carmen, on October 15, 1962, requested in a Section 6 notice served on Carrier, the exclusive right to couple air hose and make air tests (certainly, if they had been doing this work exclusively, there would have been no reason for such notice). This request was rejected by the Presidential Emergency Board and Article V of the September 25, 1964 Agreement was in final settlement of the question. It is a conditional rule wherein a number of criteria must be met before the work becomes Carmen's work. The primary requirement or condition is that Carmen must be employed and on duty in the departure yard.

The Employees admit there were no Carmen on duty in the departure yard when the work in question was performed by Switchmen at Corinth, Miss., on the night of July 5, 1965; consequently, the work was properly performed by Switchmen.

CONCLUSION

The facts in this case show there is no merit to the claims being made by the Employees because no Carmen were employed and on duty in the departure yard at Corinth, Miss., July 5, 1965, when the work of coupling air hose and testing of the air was performed on the cars in question by Yardmen. This is the primary requirement of Article V of the September 25, 1964 Agreement, which states that in order for the work to be Carmen's, Carmen must be employed and on duty in the departure yard.

Neither were Carmen's jobs abolished on that date, as claimed by the Employees, as they were not employed in the first place. Carrier has shown without question that Carmen are not assigned to work on legal holidays (see Carrier's Exhibit A), and when they are called to work on legal holidays, it is casual overtime.

Article V of the September 25, 1964 Agreement, which was effective November 1, 1964, clearly permits Yardmen, or anyone else, for that matter, to couple air hose and make air tests on cars when Carmen are not employed and on duty in the departure yard; and it has been established without question in the instant case that Carmen were not employed and on duty in the departure yard at Corinth, Miss., when the work was performed, and Carrier again stresses it is only Carmen's work when they are employed and on duty in the departure yard.

There is no merit to the claim, and Carrier asks that this claim be denied.

(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 waived right of appearance at hearing thereon.

Monday, July 5, 1965, was treated as a legal holiday on this property. By bulletin of June 28, 1965, the Carrier so advised all concerned and notified Mechanical Department employes they would not be required to work that day unless called.

Bulletins advertising Shopcraft positions on this property specifically exclude all legal holidays from the work assignments.

On July 5, 1965, three through trains operated into and out of the yard at Corinth, Mississippi, between the hours of 8:00 A.M. and 5:00 P.M. A carman was called on an overtime basis, and used to protect the work necessary and incidental to the operation of these through trains during that time period. Later that same day yardmen were used to couple air hose and make the usual air tests on cuts of cars to be switched and delivered to certain consignees and other railroads.

The claim is based upon the contention of the Employes that Claimant should have been called and used to perform the work done by the yard crews.

Article V of the September 25, 1964 National Shopcraft Agreement is applicable and controlling here. It reads as follows:

"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."

The foregoing provision clearly requires that Carmen be employed and on duty in the departure yard as a condition to their performance of the work described therein. Here the facts establish that legal holidays, including July 5 in this instance, are expressly excluded from the regular assignments of Carmen. Thus, there was no Carman "employed and on duty" at Corinth yard when yard crews performed the described work. Accordingly, there is no merit in the allegation that Article V was violated.

This is not a case where a job is abolished and the work thereof assigned for performance by another craft. Here, carmen's jobs were advertised to work seven days a week, but not on legal holidays. Thus, there was no abolishment, as such, of any Carman's job on July 5, 1965.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1968.