

Award No. 5533

Docket No. 5358

2-MP-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Article V of the Agreement of September 25, 1964, when other than carmen inspected, coupled hose and made brake test on train leaving Departure Yard, North Little Rock, Arkansas, February 1, 1966.

2. That accordingly, the Missouri Pacific Railroad Company compensate Car Inspector B. J. Clark in the amount of four (4) hours for February 1, 1966.

EMPLOYEES' STATEMENT OF FACTS: North Little Rock, Arkansas is a terminal point on the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, and has what is known as a departure yard from which trains depart.

On Tuesday, February 1, 1966, transfer train was made up in the departure yard which consisted of sixteen (16) cars and after the switch crew made the required inspection, testing of air brakes and appurtenances on the train, it then departed with Engine #1073 from the North Little Rock departure yard to Little Rock, Arkansas (across the Arkansas River) and then to the Rock Island Railroad interchange.

This mechanical inspection, which is required by the Carrier and Power Brake Law, was made by other than carmen although carmen were on duty and available to perform this work, including Car Inspector B. J. Clark, hereinafter referred to as the Claimant, work week Monday through Friday, rest days Saturday and Sunday, hours 4 P.M. to 12 Midnight. The Claimant was working on the adjacent track and was available to perform this inspection.

This matter has been handled up to and including the highest designated officer of the Carrier who has declined to adjust it.

The Agreement of June 1, 1960, as subsequently amended, particularly by the Agreement of September 25, 1964, is controlling.

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.

(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 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.

Petitioner contends that Carrier violated the National Shop Crafts Agreement of September 25, 1964, particularly Article V thereof, when other than carmen inspected, coupled hose and made tests on a transfer train consisting of sixteen (16) cars which were assembled at Carrier's departure yard, North Little Rock, Arkansas on February 1, 1966 for movement across the Arkansas River to the Rock Island Railroad Interchange located in East Little Rock, Arkansas. Claimant is a carman who was on duty and available to perform the disputed work.

The fundamental facts are not in issue in this dispute. The yards here involved were at least three miles apart and separated by the Arkansas River. Carrier's East Little Rock yard clearly constitutes a departure yard from which a train departed for the purpose of making an interchange delivery to the Rock Island Railroad outside the limits of Carrier's yard. Petitioner protests the use of other than carmen to inspect and test air brakes as well as couple air hose incidental thereto on the transfer train that departed from Carrier's departure yard on February 1, 1966.

Recent Awards of the Board have arisen out of similar disputes between the same parties under the pertinent language of Article V of the September 25, 1964 National Agreement. In our Award No. 5368 certain criteria were established for determining whether Article V of said National Agreement is applicable, which are as follows:

- "1. Carmen in the employment of the Carrier are on duty.
2. The train tested, inspected or coupled is in a departure yard or terminal.
3. That the train involved departs the departure yard or terminal."

Thus, we find that the factual basis for the instant claim meets the requisite criteria set forth in Award No. 5368. Furthermore, the facts in this case correspond in all material respects to those involved in earlier disputes between these parties which were considered by this Division in our Awards No. 5341 and 5367. We do not consider either of these Awards palpably erroneous and find them to be controlling in this case. Accordingly, we will sustain the claim.

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 September 1968.