



Award No. 5724
Docket No. 5467
2-AT&SF-CM '69

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. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (CARMEN)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—(WESTERN LINES)—**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Atchison, Topeka and Santa Fe Railway 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 Atchison, Topeka and Santa Fe Railway Company's departure yard about 3:30 P.M., beginning November 1, 1964 at Pueblo, Colorado.
2. That accordingly the Atchison, Topeka and Santa Fe Railway Company compensate Car Inspectors W. W. Johnson and P. E. Carrillo in the amount of one (1) hour each day retroactive to November 1, 1964 and to continue in similar amount for each subsequent day at the applicable carman's rate of pay.

EMPLOYES' STATEMENT OF FACTS: Pueblo, Colorado, is a terminal point on the Atchison, Topeka and Santa Fe 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 3:30 P.M. on November 1, 1964 and each continuing day thereafter, a train consisting of a locomotive, several cars and a caboose was made up in Pueblo Departure Yard for dispatchment to Minnequa, Colorado, which is located approximately five (5) miles from the Pueblo Yard Limits. The inspection, coupling of air hose and the testing of brakes on said train, which is required by Carrier prior to its departure, was and is performed by the train crew.

Car Inspectors W. W. Johnson and P. E. Carrillo, hereinafter referred to as the claimants, are regularly employed as such by the Carrier at

In conclusion, the Carrier respectfully reasserts

- (1) That the coupling of air hose and making car to car air tests is not the exclusive work of carmen
- (2) That the yard crews at Pueblo have over the years coupled air hose and made air tests on cuts of cars being moved over road crossings or on the main line to be transferred to Minnequa Yard
- (3) That your Honorable Board has held in Awards subsequent to the September 25, 1964 Mediation Agreement that the coupling of air hose and making air tests is not the exclusive work of carmen but may be performed by trainmen in connection with the movement of their own train cars, and
- (4) That the movement of cars in the instant dispute was a switching move with a yard engine and crew within the Pueblo Yard limits and not a train as the Employees would like for your Honorable Board to believe, and
- (5) That the instant dispute is entirely without merit or support under the rules of the Shop Crafts' Agreement or Article V of the September 25, 1964 Agreement and should be denied for the reasons set forth herein.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and, accordingly, reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Employees' ex parte submission in this dispute.

(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.

Petitioner contends that Carrier violated Article V of the September 25, 1964 National Shop Crafts Agreement on November 1, 1964 and each date thereafter when other than carmen inspected, coupled hose and made brake tests on a particular train which leaves Carrier's departure yard at Pueblo, Colorado at approximately 3:30 P.M. for Minnequa, Colorado, some five miles distant from the pueblo yard limits. The instant claim is on behalf of two named claimants who were on duty at the time the disputed work was performed by members of the train crew and for each of whom Petitioner here seeks retroactive compensation in the amount of one (1) hour for each date of violation commencing on November 1, 1964.

Carrier contends that the movement of cars involved in the instant dispute was merely a switching move with a yard engine and crew within the Pueblo yard switching limits and not train movements under the provisions of Article V of the September 25, 1964 Agreement.

Carrier further avers that the switch crews merely complied with Section 132.13(e) (1) of the Power Brake Law of 1958, which pertains to transfer train and yard train movements not exceeding 20 miles, and that the required coupling of air hose as well as brake tests were properly performed by trainmen instead of car inspectors regularly assigned to work in the Pueblo Yard in accordance with established practice. Despite established practice and the applicability of Section 132.13(e) (1) of the Power Brake Law of 1958, the record reveals that switch crews received specific instructions before being assigned to perform the testing of air brakes and related coupling of air hose on trains departing for Minnequa, Colorado in accordance with Carrier's Bulletin No. 514 (Carrier's Exhibit B). Analysis of said bulletin discloses that the disputed work requires the skills possessed by carmen, and clearly comes within the purview of Article V of the September 25, 1964 Agreement.

The record here reflects that the Brotherhood of Railroad Trainmen was duly notified of the pendency of this case and afforded an opportunity to file a submission. Furthermore, the effective Agreement between the Carrier and the Brotherhood of Railroad Trainmen was submitted in evidence and considered by the Board.

Article V of the September 25, 1964 Agreement expressly covers the disputed work when performed on trains leaving departure yards, coach yards or passenger terminals. In our award No. 5368 certain criteria were established for determining whether Article V of the September 25, 1964 Agreement is applicable, and the factual basis for the instant claim meets all of these criteria. Accordingly, we must conclude that Carrier violated Article V of said National Agreement. See also Award Nos. 5320, 5439, 5441 and others.

In view of the foregoing, the inswant claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1969.