

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the provisions of the current controlling agreement when it improperly assigned other than Carmen to give air brake inspection and test, and couple air hose at Southover Yard, Savannah, Georgia, on June 30, 1972.
2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carman E. R. Tuten, four (4) hours at pro rata rate for June 30, 1972.

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.

Petitioner contends that Carrier violated Article V of the National Shop Crafts Agreement of September 25, 1964 when it instructed other than carmen to couple air hose and make tests on a train consisting of 18 cars which were assembled at Carrier's Southover Yard and delivered to industries at Carrier's wharf. Carrier concedes that it instructed a switch engine Foreman and his crew to couple the air hose and make an air hose test but maintains that Article V was not violated since the cars did not depart Southover Yard. It being undisputed that the cars did not depart Southover Yard on the day in question, the issue before us for determination centers on whether the cars must depart the yard or terminal before there can be a violation of Article V of the National Shop Crafts Agreement of September 25, 1964?

Petitioner insists that the Agreement applies to all trains which are made up and depart from the departure yard even though, such as here, the train did not proceed beyond the switching limits of Southover Yard since the industries at Carrier's wharf are located within the Southover Yard switching limits. In light of numerous Awards of this Board construing this identical Agreement we are constrained to conclude that the Petitioner's contention in this regard is unpersuasive.

Award No. 5368 of this Board determined that in order for carmen to establish the right to perform work under Article V, they must show that:

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.

Since that Award was adopted on January 31, 1968, this Board has repeatedly and consistently adhered to the foregoing tripartite criteria when faced with claims similar in content to the one before us. See, for example, Second Division Awards 5441, 5535, 5671, and 5676 among others. We have furthermore studied quite closely Second Division Awards 5341, 5367, 5461, 5533, 5724 and 5759, relied on by the Petitioner, but we find them clearly distinguishable from the claim at hand. Nowhere in any of those Awards did the Board sustain Petitioner's position where it was not shown that the cars involved departed the terminal or yard limits. In fact, the Board has consistently recognized the criteria set forth in Award No. 5368 that before a violation of Article V can be shown, the Petitioner must prove an actual departure from the yard or terminal in question. We do not consider those Awards to be palpably in error and we thereby feel compelled to follow them. Since the 18 cars in question did not depart the Southover Yard limits after the switch crew coupled the air hose and made the brake test, this Board concludes that the work did not accrue to carmen through application of Article V of the September 25, 1964 Agreement.

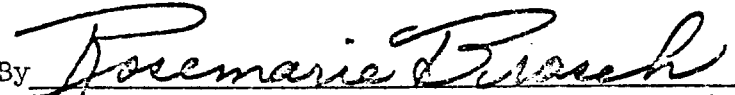
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of March, 1975.