

The Second Division consisted of the regular members and in addition Referee Abraham Weiss 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 Employes:

1. That the Missouri Pacific Railroad Company violated Article V of the Agreement of September 25, 1964 and Article VI, Section (c), of the Agreement of January 12, 1976 when train crew was assigned to couple air hose and make initial terminal brake test on outbound train No. XHT after this train had been removed from Settegast train yard, Houston, Texas, to Pierce Siding in the Settegast train yard, Houston, Texas, November 8, 1976.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman A. Zatopek in the amount of four (4) hours at the pro rata rate account of the violation of November 8, 1976.

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.

The circumstances giving rise to this claim are as follows: On the date of the incident, Carrier made up a train at its Settegast Train Yard, Houston, Texas. The train was then moved to Pierce Siding.

Petitioner charges that Pierce Siding is within the Settegast yard limits and that the work performed by the train crew in coupling air hose and making a brake inspection should have been performed by Carmen under Article V of the September 25, 1964 agreement, which reads:

"Article V

In yards and terminals where carmen in the service of the Carrier operating or servicing the trains are employed and are on duty in the departure yards, 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 coupline of air, signal, and steam hose incidental to such inspection, shall be performed by the carmen."

Petitioner asserts that the train in question was moved from the Settegast train yard to Pierce Siding before it was given its initial brake inspection and air hose coupled. Instead, it is claimed, these two functions, which are reserved to carmen by Article V, were performed by the train crew.

Carrier, on the other hand, disputes these allegations, stating that:

1. Pierce Siding is not part of the Settegast Yard and no Carrier carmen are employed at this point. Moreover, Pierce Siding is not classified as a departure yard but an intermediate point and is serviced by the Houston Belt and Terminal Railroad.

2. The train was worked in Settegast Yards with yard air, and moved to Pierce Siding after being inspected, oiled and brakes checked by carmen on duty.

3. After Carrier carmen made the inspection and air test, the train was taken to Pierce Siding where a caboose was added to the train.

4. Article V, paragraph (b) of the September 25, 1964 agreement allows coupling of air hose between caboose and the last car of an outbound train to be performed by other than carmen. Operating crews have a right to make a service application of brakes.

There is, as is apparent, a conflict in the positions of the parties. It is well settled that this Board does not resolve conflicts in evidence. It is also settled beyond question that the Petitioner has the burden of proving all the elements of its claim. Based on the record before us, we must find that Petitioner has failed to satisfy its burden of proof by a preponderance of substantial evidence. We are, therefore, required to deny this claim.

A W A R D

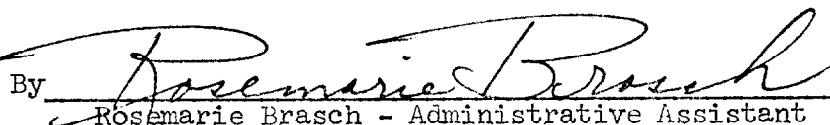
Claim denied.

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Award No. 7893
Docket No. 7715-T
2-MP-CM-'79

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 19th day of April, 1979.