Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8140
SECOND DIVISION Docket No. 7779
2-N&W-CM-'79

The Second Division consisted of the regular members and in addition Referee James F. Scearce when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That the Norfolk and Western Railway Company violated Rule 64 (B) of the current working agreement effective September 1, 1949, and Article VI, paragraph (c), Mediation Agreement dated December 4, 1975, on August 31, September 1, 2, 3, 7, 8, 9, 10, 13, 20, 22, and 23, 1976, at Norwalk, Ohio.

2. That the Norfolk and Western Railway Company be ordered to compensate Carman M. E. Klein two and seven-tenths (2.7) hours for August 31, September 1, 2, 3, 7, 8, 9, 10, 13, 20, 22, and 23, 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 thrust of the Organization's claim goes to certain functions, performed by employees other than Carmen, involving coupling air horses and performing air tests on trains at the Carrier's Norwalk, Ohio train yard facility. The Organization claims exclusive right to such work under Rule 64--(Classification of Work, (B) of the applicable Rules Agreement, and Article V of the September 25, 1964 Agreement ("Coupling, Inspection and Testing") as amended and expanded by a December 4, 1975 Mediation Agreement, particularly paragraph (c). Such Agreement also added paragraphs (d) (e) (f) and (g) to the original Article.

A reading of Rule 64 (B) offers no support to the Organization's claim of exclusivity. Article V, as originally written, identified certain work as Carmen's -- "coupling of air, signal and steam hose" where such work was incidental to "inspecting and testing of air brakes in the departure yard, coach yard, or passenger terminal. . . .", but qualified such work to facilities where "Carmen are employed and on duty" and where such work "is required by the Carrier." Paragraph (c), as amended by the December 4, 1975 Mediation Agreement established that:

> "(c) If, as of July 1, 1974 a railroad had carmen assigned to a shift at a departure yard, coach yard or passenger terminal from which trains depart, who performed the work set forth in this rule, it may not discontinue the performance of such work by carmen on that shift and have employees other than carmen perform such work (and must restore the performance of such work by carmen if discontinued in the interim), unless there is not a sufficient amount of such work to justify employing a carman."

The Carrier had Carmen assigned to both first and second shifts at the yard as of July 1, 1974; subsequent thereto, it abolished the second shift job, without dispute by the Organization. The work in question herein was conducted past the first shift hours -- those worked regularly by the Claimant and well after the termination of the second shift operation.

There is nothing adduced in the record to demonstrate that the conditions set forth by Article V, as amended by the December 4, 1975 Mediation Agreement, were present here that would reserve such work for the Claimant. A test of part of such criteria was established in Second Division Award 5368. The absence of a Carman on the second shift, apparently due to an insufficient amount of work, and the lack of exclusivity under Rule 64 (B) foreclose favorable consideration of the Organization's claim herein.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1979.

CORRECTED

LABOR MEMBERS' DISSENT TO AWARD NO. 8140, DOCKET NO. 7779

The Majority erred when they stated that:

> "The work in question herein was conducted past the first shift hours...those worked regularly by the claimant and well after the termination of the second shift operation."

The Majority failed to review and give proper consideration to the unrefuted Employes' Statement of Facts found on pages 3, 4, and 5 of Employes' Submission which establishes that incidents alleged by the Employes to be in violation of the controlling Agreements occurred on the second (2nd) shift on August 31, September 1, 2, 22, 1976 and on the first (1st) shift (i.e. 6:30 a.m. to 2:30 p.m., Monday through Friday), which was the job assignment held by the claimant at the time of the violations cited, on September 7, 13, 20, 22, 1976.

The Majority has failed to consider the fact that in the latter instances mentioned herein the claimant was on duty and in the departure yard while the infractions of the controlling Agreement occurred.

The Majority continues its erroneous deliberations by stating in pertinent part:

> "The Carrier had carmen assigned to both first and second shiftsat the yard as of July 1, 1974; subsequent thereto, it abolished the second shift job, without dispute by the Organization."

The Organization may not have disputed the abolishment of the second shift position, which was abolished subsequent to July 1, 1974 (December 28, 1974), but the Board failed to consider

the fact that the Amendment of Article V of the September 25, 1964 Agreement, coupling, Inspecting and Testing, did not become effective until sixty (60) days after the effective date of the December 4, 1975 Agreement, therefore, the Organization could not have disputed the abolishment of the second shift job at the time it was abolished. The Agreement providing for the restoration of the performance of this type of work to the Carmen's Craft did not exist on December 28, 1974 however, with the advent of this Agreement the Carrier was obligated to restore the work to the Carmen's Craft, and if there was sufficient work to employ a carman on the second shift the position abolished December 28, 1974 should also have been restored.

In view of the above undisputed facts of record, the Majority has failed to give all these facts proper consideration, and has rendered an untenable award detrimental to the Organization's contractual rights.

Therefore, Award No. 8140 is palpably erroneous.

J. C. Clementi
Labor Member