

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated Rule 64 (B) (WLE), Rule 64 (B) (2) (WLE), and Rule 112 (WAB), Rule 112 (A) (WAB), as applicable, particularly as the aforementioned Rules have been amended by Article V, National Agreement dated September 25, 1964, and subsequent Article VI, National Agreement dated December 4, 1975, on March 9, 15, 21, 29, and April 15, 16, 18, 1978, at Toledo, Ohio.
2. That the Norfolk and Western Railway Company be ordered to compensate the following Carmen as noted below:

<u>Carmen</u>	<u>Date</u>	<u>Compensation Requested</u>
L. Weaver(WLE)	3-09-78	4 Hours Straight Time
W. Wells(WLE)	3-15-78	4 Hours Straight Time
J. Robb(WAB)	3-21-78	4 Hours Straight Time
E. Falk(WAB)	3-29-78	4 Hours Straight Time
E. Falk(WAB)	4-15-78	4 Hours Straight Time
W. Wells(WLE)	4-16-78	4 Hours Straight Time
G.D'Emilio(WLE)	4-18-78	4 Hours Straight Time

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 Organization cites seven instances in which other than Carmen performed the work of testing air brakes and coupling in the Maumee, Summer Street and Homestead Yards in alleged violation of Article VI -- COUPLING, INSPECTION AND TESTING of the National Agreement of December 4, 1975, paragraph (c) (amending Article V of the September 25, 1964 National Agreement), which reads as follows:

"(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 perform 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 issue here is not whether Carmen have exclusive rights to such work, but rather whether Carmen were not employed for such work in violation of the specific terms of the above quoted Paragraph (c).

The Board accepts the reasoning of Award No. 5368 (Ritter) and Award No. 8140 (Scearce) in specifying the criteria which must be met for a violation to be found when other than Carmen are employed in the referenced work:

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.

Upon review of the record, the Board finds that the second and third criteria have been met in all seven instances. (In one instance, the Carrier argues in its submission that no "departure" was made, but this argument was not raised on the property and need not and may not be examined by the Board.)

The key to the dispute is whether Carmen were "on duty" at the time of the incidents. Despite the Organization's reference to combined seniority rosters, the record shows that Carmen were not on duty at the Maumee Yard on March 15, 1978 at 5:45 p.m. or March 29 at 6:05 a.m., or at the Summer Street Yard on April 15 at 3:30 a.m. or on April 16 at 7:30 a.m. Under Article VI, Paragraph (c), there is no entitlement to the work for Carmen.

As to the other three instances, the Board finds that all three cited criteria have been met.

The request for four hours' straight time pay is according to rule cited by the Organization and is not excessive where applicable.

A W A R D

1. Claims for L. Weaver, March 9, 1978; J. Robb, March 29, 1978; and G. D'Emilio, April 18, 1978 sustained.
2. Claims for W. Wells, March 15 and April 16, 1978; and E. Falk, March 29 and April 15, 1978 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 30th day of September, 1981.