Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10467
SECOND DIVISION Docket No. 9836-T
2-B&O-CM-'85

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (The Brotherhood Railway Carmen of the United States and Canada
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That Carrier violated the terms of the controlling Agreement when on the date of February 16, 1982, a celebrated holiday, Carrier assigned train crew to inspect, couple, and make air test on train, Engine #6528, cars UTLX 47723, ACI6416 and Caboose 2932 at Akron, Ohio. Claimant, Carman Leonard Whitlock was laid in for the holiday and told not to report for his regular duties by Carrier, thus Carrier allowed others, train crew, not contractually entitled to do so to perform carmens work as per above on the date in question, in direct violation of Rules 138 and 144 1/2 of the controlling Agreement.

2. That accordingly, Carrier be ordered to compensate claimant for all time lost account this violation; eight (8) hours pay at the time and one-half rate.

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 employes 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 essential facts in this case are generally undisputed. Claimant, L. Whitlock, was assigned as a Car Inspector on the second shift at Carrier's Akron, Ohio yard. On February 16, 1981, which was the celebrated day of the President's Day Holiday, all Carmen at the Akron yard were "laid in" for the Holiday and were told not to report for work. During the second shift on said date, however, a train was built consisting of Engine #6528, two (2) tanker cars UTLX 47723 and ACI 6416, and a Caboose #2932, which was going to the Goodyear Plant for switching. Before the train left the yard, the assigned crew performed the necessary work of coupling the air hoses and making the air brake tests.

Thereafter, a claim was filed contending that the train crew improperly performed work which normally was performed by employees in the Carmen classification and thus in violation of Rules 138 and 144 1/2 of the controlling Agreement. In remedy of the alleged violation, it was requested that Claimant, L. Whitlock, be compensated for eight (8) hours pay at the rate of time and one-half.

Organization's basic contention in this dispute is that Carrier improperly reassigned the work of coupling air hoses and making air tests to the yard crew on February 16, 1981, and further that such work belongs exclusively to the Carmen's craft. Said work, according to Organization accrues to employees in the Carmen craft by virtue of the clear and unambiguous language of Rules 138 and 144 1/2 paragraphs (a) and (c) of the applicable Shop Crafts Agreement. Organization further maintains that it has been held by other Boards on this Division that work which is normally performed by a particular employee craft during their regular work week (such as Carmen in the instant case), cannot be assigned to another classification on a Holiday or weekend such as Carrier is attempting to do in the instant case. (See: Second Division Award No. 8094). Lastly, Organization charges that "...Carrier misused and abused their managerial prerogative on the date in question, by arbitrarily 'laying in' all Carmen, including Claimant, who was, in fact, available, and allowing trainmen and/or train crew to perform the work in question, work which, undisputedly is performed and has been performed over the years, consistently, by Carmen."

Carrier's position, simply stated, is that: (1) the disputed work is not exclusively that of Carmen and has, in fact, been performed on the property and at other of Carrier's facilities on numerous occasions over a significant period of time by employees of various other classifications; (2) Rule 138 does not give exclusive jurisdiction of such work to employees in Carmen classification; (3) Rule 144 1/2 is a "conditional rule" which permits the work involved herein to be performed by Carmen under certain circumstances -- where Carmen are employed, on duty, and assigned to a shift -- and on February 16, 1981, no Carmen were on duty or assigned to a shift because the day was an observed Holiday; (See: Second Division Award No. 5460); and lastly (3) even if it is determined that there was a violation of the applicable Rules -- which Carrier disputes -- then the particular penalty which Organization requests herein (eight hours of pay at time and one-half) is excessive and not supported by Agreement rules.

After carefully reading and studying the complete record in this dispute and evaluating the seemingly persuasive arguments which have been proferred by both parties herein, the Board concludes that Carrier's assignment of the disputed work was not a violation of the applicable Rules as charged by Organization. Throughout its argumentation Organization has properly and convincingly established that the coupling of air hoses and the testing of air brakes is a normal and regular portion of a Carman's job duties. Despite this fact, however, Organization has been unable to convince the Board that the performance of said duties is complete and total, and without any limitation

whatsoever. Of particular significance in this regard are the "conditional elements" of the performance of such work as contained in Rule 144 1/2 (a). Said language clearly and unequivocably states that the inspecting and testing of air brakes "shall be performed" by Carmen "[I]n yards or terminals where Carmen in the service of the Carrier operating or servicing the train are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart...". (Emphasis added by Board)

Quite obviously, the phrase "...on duty in the departure yard," does present some type of contractual limitation upon the Carmens' right to perform such work. Said language would not have been negotiated by the parties and included in Rule 144 1/2 (a) if it was not to have any meaning. In attempting to discern that meaning, or the extent of that limitation as it is to be applied in the instant case, it appears that the decision of Referee Coburn in Second Division Award No. 5460 is precisely on point both in terms of the facts and issues as they are contained in the instant case. For those reasons, therefore, the Board is compelled to reach a similar conclusion --- since it has been determined that Claimant nor any other Carmen were "...on duty in the departure yard" on February 16, 1981, then carrier did not err by assigning the disputed work to employees other than those of the Carmens' classification.

Despite having made the aforestated determination, which seemingly absolves Carrier of any wrongdoing herein, Carrier's action, nonetheless, could still be found to have been improper if it could be proven, pursuant to Organization's assertion, that Carrier arbitrarily "laid-in" all Carmen on February 16, 1981, for the sole purpose of denying Carmen the opportunity to perform the work in question and thereby denying them their rightful "contractual entitlements." Such action on the part of Carrier, if proven, unquestionably would have a negative impact on Carrier's basic position herein and thus rightfully could serve as the basis for sustaining Organization's claim as presented. After carefully scrutinizing the record concerning this particular aspect of the case, suffice it to say that while Organization and/or Claimant might sincerely believe that Carrier purposely and arbitrarily "laid-in" all the Carmen in the Akron yard on February 16, 1981 so as to deny them the opportunity to work overtime on a legal Holiday, there is no evidence whatsoever in the record either to prove, support, or give credence to this allegation.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1985.