Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10515
Docket No. 10158-T
2-B&O-CM-'85

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

Dispute: Claim of Employes:

1. That Carrier violated the controlling Agreement, specifically Rule 144 1/2, when on the date of November 14, 1981 trainmen were permitted to perform carmen's work of testing air while carmen were, in fact, employed and on duty within the terminal. Such violation occuring (sic) Ivorydale Yard, Cincinnati, Ohio.

2. That Carrier be ordered to compensate claimants in full as sought account this violation of their Agreement as follows: Claimants Carmen H. C. Heiert and R. Downing each for 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.

Claimants, L. C. Heiert and R. Downing, are employed as Carmen by the Carrier, Baltimore and Ohio Railroad Company, at its Ivorydale Yard in Cincinnati, Ohio.

At 7:30 a.m. on November 14, 1981, train Dixie 94 arrived at Ivorydale, picked up twenty-two cars, and left the terminal at 8:30 a.m. Trainmen made the necessary air test on the train before it departed. The Organization filed a claim on behalf of the Claimants, alleging that because Carmen were in fact employed and on duty in the terminal at the relevant time, the Claimants were deprived of performing the air test work.

The Organization contends that air test work specifically accrues to Carmen under Rule 144 1/2 of the controlling Agreement. Rule 144 1/2 provides:

> "(a) In yards or terminals where carmen in the service of the Carrier...are employed and are on duty..., such inspecting and testing of air brakes...as is required by the Carrier...and the related coupling of air, signal and steam hose incidental to such inspection, shall be performed by the carmen."
>
> "(c) If as of July 1, 1974, a railroad had carmen assigned to a shift...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 employes 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 Organization argues that the last clause in Rule 144 1/2 (c) does not justify the Carrier's action because Carmen were in fact on duty at the relevant time, this type of work has always been performed by Carmen at Ivorydale, and the violation complained of in the instant claim occurs on a daily basis, thereby establishing a sufficiency of Carmen's work.

The Organization maintains, in addition, that the Carrier's elimination of Carmen positions at Ivorydale was arbitrary; under Rule 144 1/2 (c), the work at issue should have been restored to the Carmen.

Finally, the Organization contends that the claim should be sustained and the Claimants each receive eight hours' pay at the time and one-half rate.

The Carrier contends that this type of work has been performed by both Trainmen and Carmen at Ivorydale, and this Board has held that such work is not exclusive to either Organization. The Carrier further maintains that although Carmen were on duty at the Cincinnati Terminal on November 14, 1981, none were assigned at Ivorydale; the air test work, therefore, was properly performed by Trainmen.

The Carrier also argues that the Organization has not met its burden of proof in that the Organization has not supported its claim of a contract violation with any "probative and substantial" evidence.

In addition, the Carrier maintains that the Organization's demand is excessive and unsupported by the Agreement. First, the Carrier asserts that the Claimants were not on duty on the relevant date. The Carrier also points out that the Organization is seeking eight hours' pay at time and one-half for the Claimants, although the disputed work was completed in less than fifteen minutes. Finally, the Carrier asserts that the appropriate remedy for deprivation of work is the pro rata rate of the position, not time and one-half.

This Board has reviewed all of the evidence in this case, as well as the numerous decisions that have been cited as support for their positions by both parties to this dispute.

This Board finds that since there were no Carmen assigned at the Ivorydale Yard on the date in question, and since the work of making air tests is not exclusive work of the Carmen craft, the Organization has not met its burden of proof by a presentation of probative and substantive evidence demonstrating that the rights of the Carmen were violated. Hence, the claim must be denied.

This Board has held, on numerous occasions, that the making of air tests is work that is incidental to the duties of train crews in handling their trains and not exclusively the work of Carmen. (See Awards 5485 and 5462.) As was stated by this Board in Award 5439:

> "The Board finds that the work performed on this occasion was coupling air hose and making the usual air tests, incidental to the duties of train service employees."

Hence, we find that the work performed by the train crew in the case in question was incidental to the train crew's basic duties.

Moreover, although the Organization argues that the Ivorydale Yard is within the Cincinnati, Ohio, Terminal, it is clear that no Carmen have been assigned at the Ivorydale Yard since the Carrier abolished all Carmen positions at that location on November 11, 1981, because of an insufficient amount of work. The Organization offers no proof that the Ivorydale Yard and Cincinnati Terminal were not treated as separate points for the purpose of work assignments. As this Board held in Award 5344:

> "Since no Carmen are permanently assigned to the Venice Yard, the second paragraph of Article V applies, and, for that reason, Carmen do not have the exclusive right to inspect and test air brakes and appurtenances on trains in the Venice Yard."

Since we find that there is no violation on the part of the Carrier, we need not reach the issue of the amount of damages.

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 4th day of September 1985.