Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10518
Docket No. 10270-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 the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically Rule 144 1/2, when they allowed the train crew to perform Carmen's work of testing air at Stevens Yard, Stevens, Kentucky, on the date of February 2, 1982, while, in fact, Carmen (Car Inspectors) were employed and on duty.

2. That accordingly, Carrier be ordered to compensate Claimants for all time lost account this violation as follows: Claimants R. L. Frey and J. P. Allen each four (4) 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 Claimants, R. L. Frey and J. P. Allen, are employed as Carmen by the Carrier, and are assigned to the Carrier's Queensgate Yard.

On February 1, 1982, Carmen were sent to the Stevens Yard, previously consolidated with the Queensgate Yard, to oil boxes and couple hoses on an extra train. The following day, the Carrier allowed the train crew to test the air brakes on this train, rather than assigning Carmen to perform the test. Carmen were on duty at Queensgate during the relevant time. The Organization filed a claim on the Claimant's behalf, alleging that they were entitled to perform the air test work.

The Organization contends that air test work is reserved to Carmen by Rule 144 1/2 of the controlling agreement. The Organization asserts that the Carrier violated this rule when it allowed the train crew to perform the air test. Further, the Organization points out that the Stevens and Queensgate Yards are consolidated, and Carmen were on duty at Queensgate when the violation occurred.

The Organization asserts that the Claimants who were employed and on duty at the yard were contractually entitled to do the work. The claim, therefore, should be sustained, and each Claimant should receive four hours' pay at the time and one-half rate.

The Carrier contends that air test work historically has been performed by both Trainmen and Carmen, and it is not the exclusive work of either craft. The Carrier asserts that this Board previously has held that such work may be performed by employees other than Carmen; this Board has found that the work is incidental to the train crews' duties, and therefore, is not within the scope of Rule 144 1/2 of the controlling agreement.

In addition, the Carrier asserts that because no carmen are assigned to the Stevens Yard, the air test was properly perfomed by the train crew. The Carrier maintains that the Organization has not proven the elements of its Claim.

Finally, the Carrier further contends that the Organization's claim for four hours' pay at the time and one-half rate is excessive and unsupported by the Agreement. The disputed work was performed in less than fifteen minutes, not four hours; also, the appropriate penalty for depriving an employee of work is the position's pro rata rate.

This Board has reviewed all of the evidence in this case, and it finds that since no Carmen were assigned at the Stevens 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, this 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 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."

Moreover, although the Organization argues that the Stevens Yard is located within the Cincinnati, Ohio, Terminal, it is clear from the record that no Carmen were assigned at the Stevens Yard on the date in question.

Although the Carrier did send two Carmen to the Stevens Yard the day before for the purpose of coupling air hoses, that fact still does not provide the substantive and probative evidence necessary to support the Organization's claim. There are no Carmen permanently assigned to the Stevens Yard, and the Carmen do not have exclusive jurisdiction over the work in question. 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."

As was stated by this Board in Award 6369:

> "...the burden is upon the petitioner to prove a violation by a presentation of probative and substantial evidence."

The Organization has not met its burden in this case; and consequently, the Claim must be denied.

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.

AWARD

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.