Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10679
SECOND DIVISION Docket No. 9954-T
2-SLSW-CM-'85

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

1. That the St. Louis Southwestern Railway Company violated the controlling agreement and the Railway Labor Act when employes other than Carmen were instructed to couple the air hose on the twenty-seven (27) MKT and five (5) ATSF car train transferring cars to the MKT and ATSF Railroads.

2. That the St. Louis Southwestern Railway Company be required to pay Carman J. Atkinson two hours and forty minutes (2 hour 40 minutes) pay at one and one-half the proper pro rata rate of pay.

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.

In the controlling Agreement, Addendum No. 2, Article V, paragraph (1) states:

> "(a) In yards and terminal 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, such inspecting and testing of air brakes and appurtenances on trains as is required by the Carrier in the departure yard, coach yard, or passenger terminal, and the related coupling of air, signal and steam hose incidental to such inspection, shall be performed by the carmen."

As interpreted by previous decisions of this Board (See Awards 5461 and 5368), this Rule means that the work in dispute is to be done by Carmen if:

1. Carmen in the employ of the Carrier are on duty at the location;

2. The train tested, inspected or coupled is in a departure yard or terminal; and

3. That the train involved departs the departure yard or terminal.

All three of these tests are met in the instant case, and not disputed by the Carrier. Notwithstanding, the Carrier disputes the assertion that the two cuts of cars, one of which moved from the Carrier to the MKT and the other of which moved from the Carrier to the AT&SF, were, indeed "trains", as contemplated under the Agreement.

Carrier then turns to a discussion of its own Operating Rules definition of what is or is not a "train". It makes distinctions between defined trains and other undefined "things" which move on its tracks from one railroad to another. In the Board's view these distinctions are more nice than real. In addition, the Carrier does not cite any such distinctions as being spelled out in the controlling Agreement. Finally, it is clear that some freight cars on the outbound track did move from the Carrier to two other railroads, presumably under the power of a locomotive, and, in any real sense, that must be considered to have been a train moving.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1985.

CARRIER MEMBER'S DISSENT
TO
AWARD NO. 10679, DOCKET NO. 9954-T
(Referee Stallworth)

The Majority in their findings are in error by concluding that the thirty-two car transfer was a train.

The Majority either did not understand the difference between a cut of cars and a train or else chose to ignore this clear distinction which has been ruled on by the Board many times in the past. In Second Division Award No. 7997, the Board ruled:

> "The Board finds that the movement involved herein was that of a 'cut of cars' from one yard to another. While carmen are used for air hose work in connection therewith at times, there is no grant of exclusive jurisdiction as in Article V in reference to 'trains' as provided in that agreement language."

The Majority states that all three tests which determine if the work is to be done by Carmen have been met and are not disputed by the Carrier. This simply is not a fact. The Carrier vigorously argued that the case involved the coupling of air on a cut of cars and not a train. It would be impossible for two of the three tests to have been met as a train did not exist.

The Majority concluded by stating:

> "Finally, it is clear that some freight cars on the outbound track did move from the Carrier to two other railroads, presumably under the power of a locomotive, and, in any real sense, that must be considered to have been a train moving."

The logic used by the Majority simply is not consistent with prior decisions of the Board or industry wide accepted practices.

Therefore, the findings of the Majority are incorrect and shall not be used as a precedent for future cases of this nature.

Hence, we dissent:

M. W. Fingerhut

M. C. Lesnik

P. V. Varga

J. E. Yost