Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10742
Docket No. 10528-T
2-SOO-CM-'86

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
(Soo Line Railroad Company

Dispute: Claim of Employes:

1. That under the current agreement, the Soo Line Railroad Company violated Rules 31, 27, 28 and 94 of the Shop Crafts Agreement as amended and Article 6, "coupling, inspection and air test", of the 1975 National Agreement, when on September 24, 1982, the Soo Line Railroad Company ordered and allowed the switchmen at Stinson Yard, a departure yard, to perform the Carmen's work of coupling, inspecting and air test of trains, where Carmen had previously performed such work on the third shift, 11:30 PM to 7:30 AM.

2. That the Soo Line Railroad Company violated the time limit provisions of the agreement when General Locomotive and Car Foreman R. J. Erkel failed to give reasons for disallowing the claim in his denial letter dated September 28, 1982.

3. That accordingly, the Soo Line Railroad Company be ordered to pay Carman Ed Jurvelin, Superior, Wisconsin, penalty time of eight (8) hours at time and one-half at Carmen's rate of pay on September 24, 1982 for not being allowed to perform the Carmen's work of coupling, inspection and air test trains at Stinson Yard, where Carmen had previously performed such work.

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.

Claimant, Ed Jurvelin, was employed as a Carman at the Carrier's Stinson Avenue Yard location, where eastbound trains leaving Superior, Wisconsin are made up. Prior to June 6, 1982 two Carmen had been assigned to the third shift at Stinson Yard to perform coupling, air tests, and train inspection. On June 6 these third-shift Carmen positions were abolished, due to a decline in business. Therefore, no Carmen were assigned on a regular basis to the third shift at the time this dispute arose.

On September 24, 1982 the Claimant worked the second shift at the Stinson Yard, from 3:30 P.M. until 11:30 P.M. According to the Organization an outbound train was made up beginning at 11:20 P.M., ten minutes before the completion of the Carmen's second shift. The parties agree that on this date the work of coupling, inspection and air-testing the outgoing train was performed by Switchmen, rather than Carmen. The Organization claims that this is a violation of the Agreement because Switchmen performed Carmen's work. The Organization demands eight hours pay at time and a half for Carman Jurvelin, who was presumably the senior Carman on the second shift, who was available for overtime.

The Organization also argues that the Carrier violated the procedural requirements for handling a claim when it responded initially to the claim by stating simply "No rules violated." The Organization argues that this response violates Rule 31 of the current Agreement, which states that a claim or grievance must be granted if the Carrier does not respond within 60 days to the grievance, giving in writing its reasons for not allowing the claim. In the Board's opinion the Carrier should have given more detailed reasons for its initial denial, so that the Organization could better prepare its appeal. But the Organization's initial grievance is very brief too, and claims a violation of only one rule from the contract, even though it eventually relied upon five rules. Furthermore, even though the Carrier's statement that no rules were violated is not very helpful in resolving the grievance, this Board in earlier decisions has allowed this response and distinguished it from the totally unacceptable answer that the claim is simply denied, without any reasons given. Second Division Award No. 7371, Fourth Division Award No. 3426. Therefore, the Board will not grant the claim upon this procedural objection, and must proceed to the merits.

Under Rule 94 of the current Agreement, entitled "Classification of Work," car inspection and air brake testing is specifically reserved to the Carmen. Furthermore, a catch-all clause at the end of Rule 94 states that an omission from this Rule of certain work does not constitute an admission that such work is not generally recognized as Carmen's work. The Carrier does not seriously dispute that the work at issue here was classified as Carmen's work, and performed by Carmen on the third shift before they were furloughed. Therefore, under Rule 94 the work at issue here is Carmen's work.

Article VI of the December, 1975 Agreement affects this dispute as well, however, and limits the effect of Rule 94. The relevant language of Article VI states:

"(c) If as of July 1, 1974 a railroad had carmen assigned to a shift at a departure yard...who performed the work set forth in this rule, it may not discontinue the performance of such work by carmen on that shift (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."
(Emphasis added.)

The section also states that any dispute over whether there is sufficient work to justify employing a Carman must be handled in the first instance by a joint check.

In the instant case, however, the Organization never requested a joint check, because the Organization does not argue that there was sufficient work in September to employ one Carman full-time on the third shift. Instead the Organization argues that when the Carrier anticipated Carmen work on the third shift, it should have either kept over a Carman from the second shift or called one in to do the Carmen work. The Board is of the opinion, however, that Article VI permits the Carrier to assign Carmen's work to employes other than Carmen when there is not a sufficient amount of work on a shift to justify employing a single Carman full-time. This is the meaning of Article VI(c), which generally preserves Carmen's work exclusively to Carmen, except when there is not a sufficient amount of work to justify employing a Carmen on a shift.

Although the Organization requests payment for a full shift's work on the date in question, it frankly admits that approximately three, not eight hours of Carmen's work was performed on that date. Furthermore, the Organization does not present any evidence, other than this claim, to refute the Carrier's evidence that almost no Carmen's work was done on the third shift during September, 1982. Moreover, it appears that when Carmen's work on the third shift increased, because of an increase in business, the Carmen's jobs were restored.

Accordingly, the Organization has failed to prove an essential element of its claim, i.e. that there was sufficient work during the period in question to occupy even one Carman on the third shift. Absent such proof, the Organization has failed to point to any clause in the controlling Agreement which required the Carrier to call in a Carman on the third shift to do any Carman's work which arose on that shift. Therefore the Organization's claims must be denied.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1986.