

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

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Chicago & North Western Transportation Company

Dispute: Claim of Employees:

1. Carman Carl Roberts was unjustly deprived of work and wages to which he was entitled when the Carrier improperly assigned train men and switch men to inspect and couple air hoses and make air test on trains #471, #961, #296, and #297 on November 7, 8, 9, 10, 11, 12, and 13, 1981 at Fond du Lac, Wisconsin.
2. That the Chicago and North Western Transportation Company be ordered to compensate Carman Carl Roberts in the amount of eight (8) hours pay at time and one-half rate of pay for each of the following dates:  
November 7, 8, 9, 10, 11, 12 and 13, 1981.

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.

Effective October 2, 1981, Carrier, citing a decline in business, eliminated the jobs of all Carman Car Inspectors working all shifts at its Fond du Lac facility. As a result of said abolishment, only the first shift at this point retained current positions which were capable of being occupied by members of the Carmen's craft. Exercising his seniority, Claimant Carl Roberts, former first shift Car Inspector, successfully transferred to first shift cleaning track. Due to an absence of on-duty Carman Car Inspector on November 7, 8, 9, 10, 11, 12 and 13, 1981, second shift train crews performed terminal testing, inspecting and air hose coupling tasks formerly done by Carmen.

According to Organization, Carrier in this case violated Rules 28, 29, 53, and 124 of the current Schedule of Rules and additionally violated Articles V and VI, Section C, of the September 25, 1964, National Agreement as amended by the December 4, 1975 Agreement, NMB Case (A-9699). The essence of Organization's Claim is that the provisions of the various collective bargaining contracts guarantee Carmen the right to perform the disputed work if there are more than two (2) hours of work per shift and if Carmen are both employed and on duty. Applying this theory, Organization contends that the Carmen employed on the cleaning track were available to perform terminal tests. Additionally, pointing to a joint study performed on the first shift of October 2, 1982, Organization further argues that more than two (2) hours of work existed requiring Carrier to assign coupling, testing and inspecting to Carmen rather than to train crews.

Carrier disputes Organization's Claim on several fronts. First, Carrier views the issue as the proper assignment of work and not the propriety of the elimination of the Car Inspectors. Second, Carrier questions the validity of the Claim by citing Awards No. 8448 and 10107 which list three (3) criteria for the reservation of this work to the Carmen's craft. Carrier maintains that only the first criterion is in dispute in the instant case; namely, were Carmen employed at the point and were they on duty when the disputed work was performed. Carrier, in this regard, does not believe Carmen working on the first shift cleaning track are relevant to the assignment of terminal testing, inspecting and coupling on the second shift. Finally, Carrier calculates that only 1.36 hours were worked on the second shift, far below the contractual two (2) hours minimum before terminal testing requires the services of a Carman.

The Board has carefully read, studied and considered the relevant contract provisions and Awards which have been presented and concludes that the Organization must first prove the following threshold issue: did more than two hours of coupling, testing and inspecting work exist during the second shift on or reasonably around November, 1981. Commonly, this can be accomplished by a joint inspection. Unfortunately, the results of the joint inspection conducted by the parties are in dispute. However, even if the inspection data were valid, the data developed are irrelevant to this Claim since the subject inspection was conducted almost a year after the Claim was filed and apparently pertained to operations on the wrong shift.

Given the inappropriate data on which Organization bases its Claim, the Board finds that Organization failed in its burden of proving that Carrier was contractually required to employ Carmen during second shift. Since Carmen were not on duty during the second shift, the Claim must be denied.

A W A R D

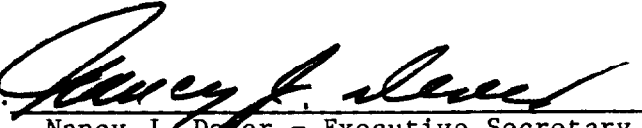
Claim denied.

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Award No. 10866  
Docket No. 10194-T  
2-C&NW-CM-'86

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest.

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 4th day of June 1986.