

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carmen Gus LaScala, Elmer Carlson, Donald Wilmot, David Bringman, Jim Norris, Gene Miller, John Corio, Jr., and Jerry Dirks were deprived of work and wages to which they are entitled when the Chicago and North Western Transportation Company violated the controlling agreement when it improperly assigned train crews to perform carmen's work of coupling air hose and making air tests on August 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, 1983.

2. That the Chicago and North Western Transportation Company be ordered to compensate the eight Carmen Claimants in the amount of eight (8) hours pay at the time and one-half rate of pay for each of the following dates amounting to \$155.44 for each date claimed as follows:

Gus LaScala -- August 13, 14, 20, 21, 22, 23, 24, 25, 26, 27 September 3, 4, 5, 10, 11, 17, and 18.

Donald Wilmot -- September 13, 14, 20, 21, and 27 September 3, 4, 5, 10, 11, 17, and 18.

David Bringman -- August 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 27, 28, 29, 30, 31, September -- 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, 1983.

Jim Norris -- August 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31. September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.

Gene Miller -- August 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18.

John Corio, Jr. -- August 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31 September 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 18.

Jerry Dirks -- August 8, 9, 10, 11, 12, 13, 14, 16,
17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30,
31 September 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, and 18

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Carmen G. LaScala, E. Carlson, D. Wilmot, D. Bringman, J. Norris, G. Miller, J. Corio, Jr., and J. Dirks, the Claimants, are employed by the Chicago and North Western Transportation Company, the Carrier, at its Sioux City, Iowa, train yard and repair track. In December 1982 and January 1983, the Carrier changed its Sioux City operation because of changes in traffic volume. Pursuant to these changes, Carmen were employed only on the 7:30 A.M. to 3:30 P.M. shift on Monday through Friday. The Carrier directed that at all other times, trainmen, and switchmen were to perform initial terminal air tests.

On August 8-31 and September 1-18, 1983, the Carrier assigned train crews to couple air hoses and make air tests on trains at Sioux City. The Claimants were available for work on all shifts on all of these dates. The Organization then filed a Claim on the Claimant's behalf, charging that the Carrier had improperly assigned train crews to perform Carmen's work.

The Organization contends that the Carrier violated the following provisions of the Controlling Agreement:

"Rule 28: Employees in all shops and engine houses, repair tracks and inspection forces, at each point shall be governed by common seniority in their respective crafts.

Four subdivisions of carmen as follows:

Pattern makers	Painters
Upholsterers	Other Carmen

The seniority lists will be open to inspection and copy furnished the committee.

Rule 29: None but mechanics and apprentices regularly employed as such shall do mechanics' work as per special rules of each craft.

At a point where it is proved to the satisfaction of the parties to this agreement that more than two hours' work is done in any day or night shift in any one day, based on the average of one week, a mechanic will be employed.

This does not preclude work being performed by car department mechanics-in-charge assigned to outlying points at which the force does not exceed five men, or in train yards.

Rule 53: Mechanics work as defined in the special rules of each craft will be performed by mechanics, regular and helper apprentices to the respective crafts.

Rule 124: Carmen's work shall consist of . . . [f]reight and passenger car inspecting, air hose coupling in train yards and terminals; mounting, dismounting and repairing steam, air and water hose; . . . repairing freight cars and tender trucks; pipe work in connection with air brake equipment on freight cars; . . . and all other work generally recognized as carmen's work.

Article V-Coupling, Inspection and Testing -- from September 25, 1964 Agreement:

(a) In yards or terminals 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 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.

(b) This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a 'doubleover' and the first car standing in the track upon which the outbound train is made up.

Article VI, Section c, d, e, and f of the Mediation Agreement, Case (A-9699) adopted December 5, 1975 revising Article V of the September 1964 Agreement:

(c) If as of July, 1974, a railroad had carmen assigned to a shift at a departure yard, coach yard or passenger terminal from which trains depart, 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 employees 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.

(d) If as of December 1, 1975 a railroad has a regular practice of using a carman or carmen not assigned to a departure yard, coach yard or passenger terminal from which trains depart to perform all or substantially all of the work set forth in this rule during a shift at such yard or terminal, it may not discontinue such work during that shift unless there is not sufficient work to justify employing a carman.

(e) If as of December 1, 1975 a railroad has a regular practice of using a carman not assigned to a departure yard, coach yard or passenger terminal from which trains depart to perform work set forth in this rule during a shift at such yard or terminal, and paragraph (d) hereof is inapplicable, it may not discontinue all use of a carman to perform such work during that shift unless there is not sufficient work to justify employing a carman.

(f) Any dispute as to whether or not there is sufficient work to justify employing a carman under the provisions of this Article shall be handled as follows:

At the request of the General Chairman of Carmen the parties will undertake a joint check of the work done. If the dispute is not resolved by agreement, it shall be handled under the provisions of Section 3, Second, of the Railway Labor Act, as amended, and pending disposition of the dispute, the railroad may proceed with or continue its determination".

The Organization initially asserts that the Claimants were all assigned to work at Sioux City, Iowa, at the time the instant claim was initiated; they were not transferred to other locations in Iowa until December 1, 1983, under a Memorandum of Agreement.

The Organization contends that Rule 124 establishes that air hose coupling in train yards and terminals, such as Sioux City, is Carmen's work. The disputed work, therefore, is contractually awarded to Carmen. The Organization further argues that this work historically has been performed by Carmen at Sioux City. The Organization points out that this assertion is supported by the fact that the Sioux City Trainmaster announced that under the policy change that is the basis for this claim, train crews would be making their own air tests at Sioux City. The Organization contends that there would not have been any such policy change if Carmen had not always performed this work.

The Organization further contends that Federal Law requires that Carmen perform the disputed work. Part 232.12 of the Initial Terminal Air Brake Test procedure set forth in the Federal Railroad Administration Office of Safety's Revised 1982 Regulations provides, "Where a carman is to perform the [air brake] inspection and test under existing or future collective bargaining agreement, in those circumstances a carman alone will be considered a qualified person".

The Organization therefore contends that the Claim should be sustained and that the Claimants should be compensated in the amount of eight (8) hours' pay at the time and one-half rate for each date claimed by the individual Claimants.

The Carrier asserts that in January 1983, it determined that there was not sufficient work to require employing Carmen on the weekends at Sioux City. As a result of this decision, Trainmen and Switchmen were required to couple air hoses and perform initial terminal air tests.

The Carrier contends that Rule 124 does not mean that every air hose coupling on the Sioux City property must be performed by Carmen. The Carrier points out that under Rule 29, there was not sufficient work to justify employing a Carman; the time needed to perform the disputed work was less than two hours per shift. The Carrier asserts that the joint study of the work, performed at the Organization's request and under Article VI, establishes that there is not sufficient work to justify employing a Carman. The Carrier has provided the results of the study which indicate that at no time on any shift was there two hours of Carman's work. The Carrier therefore contends that the Claim should be denied in its entirety.

This Board has reviewed the evidence and arguments in this case, and it finds that the Claim must be denied.

Although the Organization has presented substantial evidence that the coupling of air hoses and the making of air tests is Carmen's work, the Agreement makes it clear that if the Carrier legitimately determines that there is insufficient work to employ a Carman on a particular shift and the coupling of hoses and air test work is minimal, i.e., less than two hours per shift, then the Carrier may eliminate the Carmen and assign the coupling and testing work to other crafts.

In this case, the Carrier changed its operation at Sioux City to a five-day week in December 1982. Although traffic requirements necessitated the operation of trains on weekends, the Carrier determined that there was not sufficient work to require the employment of Carmen on Saturdays and Sundays. Hence, Trainmen and Switchmen were required to couple air hoses and perform air tests. The Organization objected; and in August 1983, it requested a joint study of the work performed. That study took place in early September 1983, and the results were that at no time on any shift was there two hours of Carmen's work to be performed.

Rule 29, cited by both parties, states, in part:

"At a point where it is proved to the satisfaction of the parties to this agreement that more than two hours' work is done in any day or night shift in any one day, based on the average of one week, a mechanic will be employed."

Hence, although substantial evidence has been submitted to support the Organization's proposition that the work involved is Carmen's work, the Carrier has properly exercised its management right to eliminate the Carmen for lack of work and assign the operations to other employees.

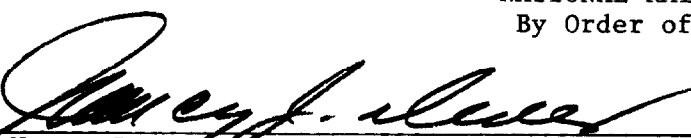
The Organization bears the burden of proof of a violation in cases of this kind. The only proof in the record shows that less than two hours of Carmen work is needed on each shift. Although the Organization has argued that there is more than two hours needed, the record has no proof in it to support that assertion. The Organization has not met its burden, and therefore this Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

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