

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 10885  
Docket No. 10598-T  
2-B&O-CM-'86

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (

(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated the controlling Agreement specifically, Rule 144 1/2, when on the date of November 6, 1982, yard crew, was allowed to couple air hoses on #2 Track, Haselton Yard, Youngstown, Ohio, while, carmen were employed and on duty.

2. That accordingly, Carrier be ordered to compensate claimant herein for all monetary losses suffered as a result of such violation: Claimant L. Ezzo, two (2) hours and forty (40) minutes 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 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.

Claimant L. Ezzo is employed by the Carrier at Haselton Yard, Youngstown, Ohio. On November 6, 1982, the yard crew on duty on the 3 P.M. to 11 P.M. shift was switching cars to put together a delivery of freight cars to the PLE Railroad. In the process of getting the block of cars ready, the crew, rather than the Car Inspector, also coupled the air hoses on fifteen cars that were switched into the #2 track as part of the PLE Railroad delivery. After the crew accomplished the task of coupling the air hoses on the cars in question, the Car Inspector was summoned to conduct the proper air test prior to the movement of the cars previously coupled by the yard crew to the PLE Railroad delivery. The Car Inspector then tested those previously coupled cars.

The Organization argues that the coupling of air hoses performed by the yard crew was Carmen's work and, therefore, the Claimant is entitled to two hours and forty minutes pay at the time and one-half rate. The Carrier argues that the work performed was incidental to switching and the duties of the train crew and could therefore be performed by the train crew. Further, the Carrier asserts that the work in question has never belonged exclusively to the Carmen Craft. Alternatively, the Carrier argues a Carman was available on the date in question who could have been used to perform the work if deemed necessary; that under no circumstances would another Carman have been called out on an overtime basis to perform the disputed work; that the Claim presented by the Organization is excessive and that if the Claim is sustained, the penalty rate should be the pro rata rate of the position and not the time and one-half rate sought. The UTU (representing the Trainmen) has declined to intervene as a Third Party.

Rule 144 1/2 reads as follows:

"Coupling, Inspection and Testing:

- (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 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.
- (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 "double-over" and the first car standing in the track upon which the outbound train is made up.
- (c) If as of July 1, 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 sufficient amount of such work to justify employing a carman."

It is well established that three criteria must be met to sustain the kind of claim made by the Organization, namely 1) the Carman in the employ of the Carrier is on duty; 2) the train was tested, inspected and/or coupled in a train yard or terminal; and 3) the train involved departs a yard or terminal. Second Division Award Nos. 10680, 10107, 6827, 5368. Along with the provisions of this Rule, is the doctrine that coupling of air hoses as performed here is not exclusive to the Carmen Craft but can be performed by Trainmen if such work is "incidental to the handling or movement of cars in their own train and was not incidental to the mechanical inspection and testing of air brakes and appurtenances on that train by carmen". Second Division Award No. 5462. See also Second Division Award No. 5485:

"From the evidence in the record it is seen that the trainmen did not make an air brake test incidental to mechanical inspection and repairs, which is exclusively reserved to carmen. The automatic brake application and brake release test made by the trainman in this instance was incidental to the handling of cars in his train".

A close reading of the record in this case shows that there is no evidence to sufficiently demonstrate that the coupling of air hoses performed by the yard crew was anything other than work incidental to the handling and movement of cars on their train. After the coupling was made, the Carman performed the appropriate test. While the Organization urges that Second Division Award Nos. 8448 and 8602 support its position, a close reading of those Awards shows that more than coupling incidental to the handling and movement of cars occurred. In those cases, the work performed by the train crew rather than the Carmen was more closely related to the mechanical inspection and repair of cars which is Carmen's work. See Award No. 8448 ("inspecting, coupling of air hose, and testing of air brakes on trains, as required by the Carrier prior to its departure"); Award No. 8602 ("Carrier ... instructed and permitted the Train Crew to inspect, couple air hose, and make air brake test on train departing ...").

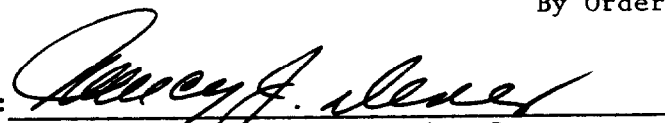
We therefore find that the record in this case does not demonstrate that the work performed by the train crew on the disputed date was incidental to the mechanical inspection and testing of air brakes and appurtenances on that train that is contemplated by Rule 144 1/2. In light of this holding, it is unnecessary to address the other arguments advanced by the parties.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1986.