

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10886
Docket No. 10599-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: (

(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Carrier violated the controlling agreement specifically, Rule 144 1/2, when on the date of November 5, 1982, yard crew was allowed to couple air hoses, Old West Bound 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 E. Frank, 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 E. Frank is employed by the Carrier at Haselton Yard, Youngstown, Ohio. The record shows that the parties are in agreement that on November 5, 1982, during the 3 P.M. to 11 P.M. shift, a yard crew was switching cars from the #1 Track and in the process, the crew switched nine PLE hoppers loaded with coke to the West End of the Old West Bound Track. The record further shows agreement that the yard crew, rather than the Carman, coupled the air hoses on the nine cars.

At this point, the record is less clear. The Organization asserts in its Submission that in addition to coupling the cars, "the required air brake test on these cars was performed by the train crew making the pick up on the Old West Bound Track". The assertion that more than mere coupling is not found in the initial Claim. However, the Organization later made a broadened assertion beyond coupling to include testing in its March 21, 1983 response to the Carrier's initial denial of the Claim. The Carrier admits that the yard crew coupled the cars, but throughout, the Carrier denies that the testing was done by the yard crew, asserting that "the carmen on duty at Haselton Yard made all necessary air tests. The UTU has declined to intervene as a Third Party.

This is the same dispute addressed in our two previous Awards Nos. 10884 and 10885. concerning the Claim to the work by the Organization made under Rule 144 1/2. As those Awards and the Awards cited therein hold, the question is whether the work was incidental to the handling or movement of cars in their own train so as to permit the yard crew to perform the work, or whether the work was incidental to the mechanical inspection and testing of air brakes and appurtenances on the train by Carmen thereby entitling the Carmen to the claimed work.

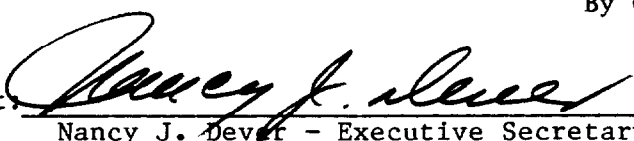
Here, the record clearly establishes that the yard crew performed the coupling function. Beyond that function, the record is unclear due to the aforementioned conflicts. Aside from the conflict in the evidence between the Carrier and the Organization as to whether testing was performed by the yard crew or the Carman, it is to be remembered that the Organization's own evidence is conflicting as to whether coupling or coupling and testing were performed by the yard crew. If the Organization had proved its Claim that "the required air brake test on these cars was performed by the train crew" and that the cars were "inspected and tested by the yard/train crew" to the degree of making the work incidental to the Carman's mechanical inspection and testing function, then we would sustain the Claim under the rationale found in Second Division Award Nos. 8448 and 8602. However, the burden is on the Organization to prove its claim through probative and substantial evidence. Second Division Award Nos. 6369 and 6603. Because of the conflicts in its own evidence discussed above, the Board believes that an examination of this record clearly demonstrates that such burden has not been satisfactorily met.

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.