Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10959
SECOND DIVISION Docket No. 10791-T
2-B&O-CM-'86

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister 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 Employes:

1. That the Baltimore and Ohio Railroad Company violated the controlling Agreement, specifically Rule 144 1/2, and historical past practice on the property, when on the date of February 28, 1983, Carrier allowed train crews to perform carmens work, Initial terminal air brake test, coupling air hoses, and inspection, while, in fact, carmen were employed and on duty at Haselton Yard, Youngstown, Ohio, such action on the part of Carrier deliberately depriving Claimant, Carman S. Medina, Youngstown, Ohio, to work which he was contractually entitled to perform.

2. That accordingly, Carrier be ordered to compensate Claimant, S. Medina, for all losses arising out of the above referred to violation of the Agreement, claiming four (4) hours pay for Claimant, at the time and one half rate of pay.

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.

This dispute has its origin in the events which transpired on February 28, 1983. It is undisputed that on that date Train XN Turn out of New Castle, Pennsylvania, picked up 60 hoppers loaded with coke at Delaney Yard. After the pickup, the train crew performed the required air brake test and departed from Delaney Yard.

The Organization takes the position the Carrier violated the provisions of Rule 144 1/2 as well as historical, past practice when it allowed train crews to perform the work in question. Essentially, the Organization claims Delaney is a Carrier Yard, and historical practice has been that any delivery from the Delaney Yard (J&L Steel Plant) would be pulled into the Haselton Yard. There, Carmen would perform the required air brake test. The Organization asserts it is undisputed that Carmen were on duty at Haselton Yard who were qualified and accessible to perform the disputed work.

The Organization argues the Delaney Yard is within the confines of the Carrier's Haselton Terminal. The Carrier denies that the work was performed in its Yard or Terminal and asserts it was not even on its property. This factual dispute is critical to the application of Rule 144 1/2. We have reviewed the cited Awards and especially those dealing with the application of Rule 144 1/2. Our review of those Awards and Rule 144 1/2 leads us to conclude that several conditions must be present to sustain a finding that the work in question is reserved to Carmen. As confirmed by Second Division Awards 5368 and 10021, those conditions are:

1. Carmen are on duty.

2. The train is physically in a departure yard or terminal.

3. The train departs the departure yard or terminal.

The Carrier initially indicated the Delaney Yard was owned by the Mohoning Valley Railroad. This was disputed by the Organization. Subsequently, the Carrier identified the disputed trackage as owned by the Jones & Laughlin Steel Company. Our review of the record supports the Carrier's contention that the air hose coupling and brake testing was performed on trackage owned by the Jones & Laughlin Steel Company. Actually, the Organization's Submission implicitly admits this fact by arguing that the Carrier strayed from historical past practice. According to the Organization, this past practice was to the effect that any delivery coming out of the Jones & Laughlin Steel plant would be pulled into Haselton Yard, which was approximately 500 yards distance. There, Carmen on duty would perform the disputed work.

The language of Rule 144 1/2 is not ambiguous. Rather, it is clear and succinct. Long established Board procedures dealing with contract interpretation hold that if the intent of the parties is expressed in clear and explicit terms, this Board will not attempt to alter or modify those unambiguous intentions by resort to past practice. If we are unable to establish the parties' intent because of ambiguity, we have and will look to past practice in order to give meaning to the disputed language.

Herein, the Organization has fallen short of its burden of proof and has not established by probative evidence that Carmen were on duty at the Jones & Laughlin Steel plant; that Train XN Turn was in Carrier's departure Yard or Terminal; and that the train departed that Yard or Terminal. Accordingly, we must deny the Claim.

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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 27th day of August 1986.