Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10996
SECOND DIVISION Docket No. 10704-T
2-SOO-CM-'86

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Soo Line Railroad Company

Dispute: Claim of Employes:

1. That under the current agreement, the Soo Line Railroad Company violated Rules 27, 28, 94, 99 and 100 of the Shop Crafts Agreement, Article 6, "Coupling, Inspection and Air Testing" of the 1975 National Agreement and the understanding of F.R.A. Rule 232.12 Par. (D) when the Soo Line Railroad Company denied its Carmen employes working at Humbolt Yard, a departure yard, the Carmen's work of coupling, inspecting and air testing of trains, which were formerly known as the M.N.&S. pick up, prior to the Soo Line Railroad Company purchasing the M.N.&S. Railway property.

2. That accordingly, the Soo Line Railroad Company be ordered to compensate Carmen Inspectors K. Johnson, S. Sperstad, P. Huseby, R. Castro, M. Gaffeney and M. Wuollet, who were denied their contractual rights to perform the Carmen's work of coupling, inspection and air testing of trains, for 2-2/3 hours, "call time", at time and one-half to be divided equally, for each day, effective January 31, 1983 and until dispute is settled. Claim was filed on a continuing basis, Sunday thru Thursday, when trains were made up in Humbolt Yard, due to the Soo Line Railroad Company continually violating the Rules. In addition to time claimed for each day Sunday thru Thursday, the following dates are claimed on Friday and Saturday when trains were made up and Carmen available, were not allowed to couple, inspect and air test the train, are dates of May 6, 7, 27, June 3, 4, July 1, 29, August 19, September 9, 10, 17, 23, 24, October 16, 22, 28, 29 November 5, 19, 26 and December 3, 1983. It is to be noted, that names of Claimants have and may further be changed during the handling of this claim, due to bidding on or off of the Carman Inspector positions.

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.

Having received authorization from the Interstate Commerce Commission, the Carrier, on June 4, 1982, purchased all of the outstanding stock of the Minneapolis, Northfield and Southern Railway Company (MN&S). The Companies were maintained as separate entities but certain operations were coordinated.

Effective January 31, 1983, the Carrier and MN&S Carmen rosters were dovetailed in the order of seniority based on the seniority dates of Carmen on their respective rosters in accordance with the implementing Agreement between the Carrier and Brotherhood of Railway Carmen.

The Claimants are employed by the Carrier as Carmen at the Carrier's repair facility at Shoreham Shops, Minneapolis, Minnesota. Pursuant to its Claim, the Organization contends that on various dates in 1983 the Carrier violated the Agreement because it denied the Claimants at the Humboldt Yard, "the carmen's work of coupling, testing and air testing of trains which were formerly known as the MN&S Pick Up, prior to the purchase of the MN&S Railway property by the Carrier."

In support of its position, the Organization asserts that the work in question on MN&S trains at Humboldt Avenue Yard is governed by the Carrier's Agreement with the Carmen. After carefully examining the record, the Board cannot agree with the position of the Organization. Before the coordination of the train operations of the Carrier and MN&S, each property was operated independently as a separate entity. Prior to March 27, 1984, when train operations were coordinated, and the MN&S and UTU Agreement was abrogated, the Carrier's Carmen Agreement governed air hose and air testing operations solely on the Carrier's property. Moreover, prior to the coordination, MN&S Trainmen had performed air tests on transfer cars interchanged at the Carrier's Humboldt Avenue Yard facility. No changes in the MN&S transfer were instituted by the Carrier prior to March 27, 1984, and the Carrier continued to assign the work of air hose coupling, inspection and air tests to Trainmen following the consolidation of the Carmen's roster on January 31, 1983. An MN&S and UTU Agreement required that the Carrier retain air coupling practices in effect, pending an implementing Agreement with the UTU, which changed the Rule and coordinated the operations. No part of the Implementing Agreement reached between the Carrier and the Carmen provides the air coupling work on the MN&S transfers was reserved exclusively to the Carrier's Carmen. It should be noted, however, that the MN&S Trainmen retained a right to the work. Furthermore the MN&S Carmen's Rules were abrogated. Accordingly, the work claimed was not governed by the Carrier and Carmen's schedule of Rules and Agreements on the date of the Claim.

Furthermore, Carmen have never performed air coupling on MN&S trains at Humboldt Yard. MN&S Trainmen and Yardmen have always coupled air hose and tested air brakes on trains at the Humboldt Yard facility. Thus, the work claimed by the Organization has not been reserved exclusively to the Carmen under Rule 94, the Classification of Work Rule. Second Division Award No. 4648 states the following:

> "The coupling of air hose and testing air brakes in connection with the movement of trains has been recognized as a function of and belonging to trainmen by our awards between these parties, listed above, [Award Nos. 3335, 3339, 3340, 3714, 4209, 4210, 4239, and 4240], and throughout the railroad industry. Hence, this scope rule does not support the claim."

Since the Classification of Work Rule (Rule 94) does not exclusively reserve the work in question to Carmen, Rules 27 and 28, which covers seniority and assignment of work, respectively, have no application to the instant case. Nor do Rules 99 and 100, which refer to Inspectors, support the contention that the work is reserved exclusively to Carmen.

The Organization also contends that the Carrier violated Article VI of the 1975 National Agreement. To prove such a violation, the Organization is required to satisfy its burden of proving that the Carrier is required to use Carmen for coupling, inspecting and testing. Article VI of the 1975 National Agreement applies only where Carmen performed the work set forth in the Rule. There is no evidence that the Carmen have ever performed the work at the Humboldt Yard facility. Since Carmen have never performed the work set forth in this Rule on MN&S trains, the Carrier was not prohibited from assigning the work to Trainmen on the dates that are claimed. Accordingly, Article VI of the 1975 Agreement was not violated by the Carrier.

Finally, it should be pointed out that the record warrants the conclusion that the trains in question on the dates specified in the instant Claim are MN&S trains. The trains were manned by MN&S crews, working under an MN&S schedule; and the transfer took place on MN&S property and was responsible for the interchange between MN&S and the Carrier.

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 17th day of September 1986.