

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: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Missouri Pacific Railroad Company violated Rules 25(a) and 102 of the controlling Agreement and Article V(a) and (d) of Agreement of September 25, 1964, as amended December 4, 1975 when train crew inspected brakes and coupled air hose on outbound train CSP15 in St. Louis Terminal and Train CSP14 departed St. Louis Terminal January 15, 1983.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman E. S. Bronson in the amount of one (1) hour at the pro rata rate. Also, work be restored to those employees of the Carmen's Craft.

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.

Claimant is employed at the Carrier's St. Louis Terminal. According to the Organization, on January 15, 1983, Carrier's Train CSP 15 departed the Lesperance Street Yard, St. Louis Terminal at 5:00 P.M. and was taken to the Piggyback Ramp, St. Louis Terminal (apparently located at Vandeventer Avenue) by the train crew where six Piggyback cars were added to said train. Prior to leaving the Lesperance Street Yard, the train was inspected by Carmen on duty. At the Piggyback Ramp, the train crew coupled air hoses, inspected and tested air brakes on those cars. Carmen are employed at the St. Louis Terminal on a twenty-four hour per day, seven day per week basis. Claimant was on duty in the Lesperance Street Yard on the date of the incident but was not transported to the Piggyback Ramp in order to perform the work.

The Organization asserts that Rules 25(a) and 102 of the Controlling Agreement and Article V(a) and (d) of the Agreement of September 25, 1964 as amended December 4, 1975 were violated when the Carrier permitted the train crew to perform the aforementioned coupling, inspecting and testing. According to the Organization, the work of inspecting and testing air brakes and the related coupling of air hose incidental to such inspection in the Carrier's departure yard are specifically reserved to Carmen where Carmen are employed and on duty in the departure yard from which the train departs. Further, according to the Organization, the Piggyback Ramp involved herein is part of the St. Louis Terminal. Here, since Carmen were on duty in the St. Louis Terminal Yard, the Organization asserts that the violation has been shown. In making its arguments, the Organization has referred to definitions contained in the Power Brake Law.

The Carrier asserts that the Piggyback Ramp in question is not a "yard" within the St. Louis Terminal, much less a "departure yard;" and further, it is not a point where Carmen are employed. Therefore, no Rule or contract violation has been shown. According to the Carrier, the Piggyback Ramp in question and the related Ramp tracks are used for the loading and unloading of Piggyback trailers on flat cars, and are in reality no different than tracks located in or adjacent to an industry where loading and unloading takes place. Therefore the Piggyback Ramp cannot be considered a "departure yard." The Carrier further argues that the "departure yard" in this case was the Lesperance Street Yard, which was the yard where the train was initially made up, inspected, and from which the train departed. The Carrier submits that Carmen have point seniority and their Agreement contains no geographical barriers such as those which exist between the Switchmen and the Brakemen, no exclusivity to work within defined territorial boundaries, nor any other craft distinction which would make the term "terminal limits" relevant to the Carmen. With respect to the Power Brake Law, the Carrier asserts that this Board is not empowered to rule on matters concerning compliance with that Law, but is confined to the terms of the Collective Bargaining Agreement. In any event, according to the Carrier, a review of the facts in this record shows that the Power Brake Law was not violated. According to the Carrier, an examination of the facts in this case shows that the original initial air brake test was performed by Carmen at the Lesperance Street Yard and all that was necessary when the pickup was made was an intermediate terminal air brake test, and Carmen do not have exclusive rights to the performance of such an air test.

Upon an examination of the facts and arguments presented in this case, and recognizing that our decision is limited solely to the facts herein concerning the Piggyback Ramp in question, we find that the Claim must be denied. In Second Division Award No. 8767, the necessary showing for these types of cases was discussed:

"The Board accepts the reasoning of Award No. 5368 (Ritter) and Award No. 8140 (Searce) in specifying the criteria which must be met for a violation to be found when other than Carmen are employed in the referenced work:

1. Carmen in the employment of the Carrier are on duty.
2. The train tested, inspected or coupled is in a departure yard or terminal.
3. That the train involved departs the departure yard or terminal."


We cannot say that the Organization has made the appropriate showing to warrant a sustaining award in this case. There is no apparent dispute to the fact that no Carmen were on duty at the Piggyback Ramp in question when the alleged violation arose. The Organization has not shown otherwise. Even assuming that the Piggyback Ramp was a separate "yard" within the St. Louis Terminal (a finding that we need not make), since no Carmen were on duty at that alleged yard, the first requirement that the Carmen be on duty has not been met. See Second Division Awards Nos. 10518, 10515. In such situations, coupling and uncoupling of air hoses and the making of air brake tests is not work exclusively reserved to Carmen. Second Division Award No. 10252. Therefore, the required burden placed upon the Organization to prove the asserted violation by probative and substantial evidence has not been met. See Second Division Award No. 6369.

In light of the above, we find it unnecessary to address the other arguments made 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 8th day of October 1986.