

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11023
Docket No. 10585-T
2-C&NW-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: (

(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carmen John Corio, Gus LaScala and David Bringman were deprived of work and wages to which they are entitled when the Chicago and North Western Transportation Company violated the controlling agreement when it improperly assigned train crews to perform Carmen's work of coupling air hose and making air test on January 8, 9, 15, 16, 22, 23, 29, 30, 1983 and February 5, 6, 1983.

2. That the Chicago and North Western Transportation Company be ordered to compensate the three Carmen Claimants as follows:

John Corio	January 8, 9, 15, 16, 22, 23, 29, 30
Gus LaScala	January 8, 15, 22, 29 and February 5
David Bringman	January 22, 29

Claim is made for eight (8) hours pay per day for each of the above listed dates.

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.

The Carrier operates a train yard and repair track at Sioux City, Iowa. On December 8, 1982, the Carrier went to a five day work week in its train yard at the Sioux City Yard with no trains operating on Saturdays or Sundays. On the dates mentioned in the Claim (Saturdays and Sundays) trains were operated in the Sioux City Yard. However, on the claimed dates, the train crews rather than the Carmen Claimants performed the coupling of air hoses and making air tests. The Carrier admits that in early January, 1983,

the Carrier reverted to a seven day per week train yard operation at the Sioux City Yard and that train crews have coupled air and made air tests on trains on both Saturdays and Sundays. However, the Carrier asserts that there was not sufficient work on the weekends to necessitate the employment of a Carman.

On September 8, 1983, the Parties agreed to perform a two day joint check to determine if there was sufficient weekend Carmen's work. The check was performed on September 10 and 11, 1983. However, with respect to the results of the joint check, the Parties came to exact opposite conclusions. The Organization concluded that there was sufficient work to employ Carmen on the weekends and the Carrier concluded there was not sufficient work. The essential difference (although other minor discrepancies exist) lies in the dispute over whether Carmen or train crews traditionally perform the air tests. The Carrier asserts that traditionally the train crews perform those tests and the Organization claims that such work belongs to the Carmen. The result was that the Organization's interpretation of the joint check included the air test work and hence, it concluded that two hours of Carmen's work per shift existed. The Carrier excluded the air test work performed by the train crews and hence concluded that less than two hours of Carmen's work per shift existed.

The Organization claims violations of Rules 28, 29, 53, and 124, and Article V of the September, 1964 Agreement, and Article VI, Sections c, d, e, and f of the Mediation Agreement, Case A, 9699 revising Article V of the September, 1964 Agreement. Further, the Organization claims that historically, the work in dispute has been performed by Carmen. The Organization further asserts that the air testing performed by train crew during the joint check was not complete.

The Carrier contends that the action of assigning the disputed work to the train crews was proper since no Carmen were on duty on the weekend dates in question. Further, as already noted, the Carrier contends that the joint check establishes that there was not sufficient weekend work for Carmen. In addition, the Carrier asserts that the joint check was not conducted until September 10, 1983 and the instant Claims are for January and February, 1983; and that the Organization did not avail itself of procedures under the Railway Labor Act to resolve the dispute concerning the differing results by the Parties after the joint check was performed.

The United Transportation Union has declined to intervene in this matter.

We are mindful that this very dispute, however involving dates in August and September, 1983, was recently passed upon by this Board in Second Division Award No. 10876. In that Award, the Claims were denied because the Organization did not meet its burden of proof of demonstrating there were two hours of Carmen's work to be performed per shift on the weekend in accord with the requirements of Rule 29. A reading of Award No. 10876, with respect to the outcome of the September, 1983 joint check involved in this case shows the following:

"That study took place in early September 1983, and the results were that at no time on any shift was there two hours of Carmen's work to be performed."

The Organization advises us that in Award No. 10876 the disputed issues set forth above concerning the appropriate conclusions and ultimate findings of the joint check were not discussed by the Parties.


Putting aside issues concerning the applicability of Award No. 10876 to this matter, we nevertheless find that even assuming the joint check showed what the Organization claims, i.e., that two hours of Carmen's work existed per shift on the date of the joint check in September, 1983, in accord with Rule 29, the Organization has nevertheless failed to meet its burden in this matter. The joint check relied upon by the Organization occurred in excess of seven months after the Claims arose. Under the circumstances of this case, we do not believe that those results are sufficient to establish violations that occurred so far remote in time from the conducting of the joint check. It is therefore unnecessary to address the other arguments raised by the Parties. The Organization has failed to meet its burden that two hours' work were available per shift to a Carman at the times grieved.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of October 1986.