

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11032
Docket No. 9877-T
2-B&M-CM-'86

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Boston and Maine Corporation

Dispute: Claim of Employees:

1. That the Boston & Maine Corp. (hereinafter referred to as the Carrier) violated Article V of the Agreement dated September 25, 1964, as amended on December 4, 1975, when the Carrier arbitrarily assigned the work of coupling air hose, inspection and testing of air brakes on twenty-one (21) freight cars on Train POME-3A and thirty (30) freight cars on POME-3B on November 3, 1980 at the departure yard, Lowell, Massachusetts, to other than those of the Carmen's craft.

2. That accordingly, the Carrier be ordered to compensate Carman D. A. Rose (hereinafter referred to as the Claimant) four (4) hours at the Carman's overtime rate of pay due to violation of the current Agreement, namely Article VI of the Mediation Agreement - Case No. A-9699, dated December 4, 1975, on November 3, 1980.

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.

On November 3, 1980, the train crews of POME 3A and POME 3B tested, inspected, and coupled air hoses on their respective trains departing from Carrier's Lowell, Massachusetts Departure Yard. The operating crews performed the disputed work because the regularly assigned Carman, who was on duty at the time, was away from the Lowell Yard performing wrecking work with another Carman who had been called in on an overtime basis to work on Emergency Main Line Derailment.

On December 29, 1980, Organization filed a Claim alleging a violation of the current Agreement, Article VI of the December 4, 1975, Mediation Agreement, NMB Case No. A-9699. While noting that the operating crews performed the disputed tests and inspections, the Local Chairman in his grievance statement based his Claim on Carrier's failure to call Claimant, who was first on the overtime list, to accompany Carman Jackson on the derailment. In remedy of the alleged violation, said time claim requested four (4) hours pay for Claimant at the overtime rate. This was the theory of the Claim as it was progressed on the property until February 27, 1982, when Organization first raised the issue of the propriety of the operating crews' performance of the coupling, testing and inspecting work. The Third Party in this dispute, the United Transportation Union, did not file a response.

In its Submission to the Board, Organization amends its original contention, claiming instead that the operating crews' disputed work performance really violated Article V of the September 24, 1964 Agreement as amended by Article VI of the December 4, 1975 National Agreement. Both Articles, of course, are the National Coupling, Testing and Inspecting Rule.

In support of its position, Organization cites numerous Awards which allegedly establish that coupling, inspecting and testing of departing trains is work which belongs exclusively to the Carmens' craft at points, such as the Lowell Departure Yard, where Carmen are employed and are on duty.

Carrier's defense in this dispute focuses exclusively upon the contention that the Claim which is presently before the Board is not the same dispute as that which was presented on the property by Organization. Carrier next directs our attention to the many Awards of this Board, among them Awards No. 6657 and 7021, which essentially hold that amended Claims, such as that in the instant case, are procedurally defective and, consequently, must be dismissed without reaching the merits.

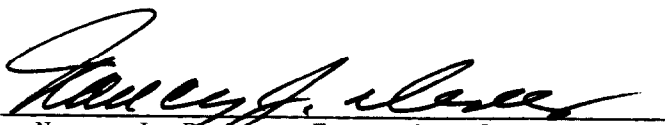
The Board has carefully read, studied and considered the complete record in this case and is persuaded that Carrier's position, as presented, is correct and, therefore, must prevail. Carrier correctly states Board policy that amended Claims are procedurally defective and subject to summary dismissal. The instant Claim was amended on the property and clearly is not the same Claim as was presented to the Board for resolution. Therefore, we have no choice but to dismiss this Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois this 15th day of October 1986.