

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Terminal Railway Alabama State Docks

Dispute: Claim of Employees:

1. That the Terminal Railway Alabama State Docks, hereinafter referred to as the Carrier, violated the Agreement when it assigned other than Carmen to couple, inspect, and test air brakes on trains in the train yards on August 28 and 30 and September 11, 1984, at Mobile, Alabama.

2. And accordingly, the Carrier should be ordered to compensate Carmen W. H. Shields, W. M. Moody and C. H. Stewart, hereinafter referred to as the Claimants, two (2) hours and forty (40) minutes each at time and one-half as the result of said violation.

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.

Claimants are employed as Carmen by the Carrier at its Mobile, Alabama Train Yard. On August 28, 30, and September 11, 1984, Carrier assigned employes other than Carmen to couple, inspect, and test air brakes on trains in the Yard. The Organization subsequently filed a Claim on the Claimants' behalf, seeking compensation for each Claimant in the amount of two hours and forty minutes pay at the time and one-half rate.

The Organization asserts that when the Carrier assigned employes other than Carmen to perform work that previously had been performed by Carmen at Mobile Yard, the Carrier violated Articles V and VI of the 1964 and 1975 National Agreements, respectively, which provide, in part:

"(a) In yards or terminals where carmen in the service of the carrier operating or servicing the train are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart, such inspecting and testing of air brakes and appurtenances on trains as is required by the carrier in the departure yard, coach yard, or passenger terminal, and the related coupling of air, signal and steam hose incidental to such inspection, shall be performed by the carmen."

* * *

"(c) If as of July 1, 1974 a railroad had carmen assigned to a shift at a departure yard, coach yard, or passenger terminal from which trains depart, who performed the work set forth in this rule, it may not discontinue the performance of such work by carmen on that shift and have employees other than carmen perform such work (and must restore the performance of such work by carmen if discontinued in the interim), unless there is not a sufficient amount of such work to justify employing a carman.

(d) If as of December 1, 1975 a railroad has a regular practice of using a carman or carmen not assigned to a departure yard, coach yard or passenger terminal from which trains depart to perform all or substantially all of the work set forth in this rule during a shift at such yard or terminal, it may not discontinue use of a carman or carmen to perform substantially all such work during that shift unless there is not sufficient work to justify employing a carman.

(e) If as of December 1, 1975 a railroad has a regular practice of using a carman not assigned to a departure yard, coach yard or passenger terminal from which trains depart to perform work set forth in this rule during a shift at such yard or terminal, and paragraph (d) hereof is inapplicable, it may not discontinue all use of a carman to perform such work during that shift unless there is not sufficient work to justify employing a carman."

The Organization asserts that because the disputed work was performed on Carrier property where Carmen are employed, the work should have been performed by Carmen under these provisions of the Agreement.

The Organization asserts that under Rule 48, which provides:

"Carman's work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars, . . . and inspection work in connection with air brake equipment on freight cars..."

braking apparatus must be inspected as part of a proper brake test. Moreover, it is undisputed that trains were made up in a yard where Carmen were employed. The Organization therefore argues that the disputed work should have been done by Carmen, and this Claim should be sustained. The Organization also argues that in the first step of the handling of this Claim on the property, the Carrier did not give a reason for denying the Claim; the Claim should be sustained on this ground alone.

The Carrier points out that it does not operate over-the-road trains, but operates only a switching terminal that handles cuts of cars in intra-yard movements. The Carrier argues that the accepted practice has been for Switchmen and Carmen to share in the coupling of air hoses and testing of air brakes. Switchmen take part in this work only when it is incidental to the movement of the cars they are handling; they do not get involved in this work when it is incidental to inspection and repair of cars.

The Carrier asserts that this air work always has been included in the Switchmen's regular duties and is included in their Agreement. Moreover, the disputed work was performed in accordance with the accepted practice; the Carrier contends that the disputed work never has been considered exclusively Carmen's work. The Carrier also argues that because it operates only a switching yard, this case does not meet all the conditions for assignment of the work to Carmen; trains are not tested, inspected, or coupled in a departure yard or terminal, nor do they depart from a departure yard or terminal.

This Board has reviewed the evidence in the record, and we find that the relied-upon Agreement provisions do not grant Carmen the exclusive right to couple air hoses and make air tests when cuts of cars are moved from one yard to another and no mechanical inspection is performed. In this situation, the Carrier operates only a switching terminal that handles only cuts of cars in intra-yard movements. It does not operate over-the-road trains.

The record is clear that the accepted practice has been for the Switchmen and Carmen to share in this coupling of air hoses and testing of air brakes.

As has been stated many times, in interpreting Article V of the 1964 National Agreement, this Board has adhered to the three criteria announced in Second Division Award 5368. The third criterion in that Award was that the train involved departs the departure yard or terminal; Carmen must meet all three criteria in order to establish a right to the work. In this case, the cut of cars moved from one yard to another and did not depart the yard or terminal. Hence, the Petitioner did not prove that that criterion was met. As was stated in Second Division Award 6827:

"... Nowhere in any of those Awards did the Board sustain Petitioner's position where it was not shown that the cars involved departed the terminal or yard limits ... the Petitioner must prove an actual departure from the yard or terminal in question."

Also see Second Division Award 6999.


In the case at hand, the Petitioner has not met its burden of proof in showing that the Carmen had exclusive right to the work.

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 3rd day of December 1986.