

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Houston Belt and Terminal Railway Company

Dispute: Claim of Employees:

1. That the Houston Belt and Terminal Railway Company violated the agreement of Article VI and Rule III classification of work when they used Foreman I. G. Mann to perform brake test in Congress yard.

2. That the Houston Belt Railway Company be ordered to compensate Carman M. Fields (4) four hours at the straight time rate as Carman Fields was instructed to leave his assignment which was at the Congress yard.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

As third party in interest, the United Transportation Union was advised of the pendency of this case, and did file a Submission with the Division.

On February 29, 1984, at 10:25 P.M., a derailment created an emergency situation requiring a full rerailing crew to clear the switching lead near Carrier's Settegast Yard.

After the Foreman exhausted the Over Time Board to secure the services of an additional Carman, he assigned an on-duty Carman, working his regular assignment in the Congress Yard to complete the rerailing crew.

This left four Carmen at the Congress Yard to perform the duties of five assignments. The record shows it is undisputed that the Congress Yard is a storage yard. No trains originate or terminate at this location.

The night the derailment occurred, Claimant was on duty from 4:00 P.M. to 12:00 A.M. at the South Yard where he performed regular Carman duties.

In the absence of the Carman, the Organization contends that work reserved exclusively to Carmen (coupling and testing air brakes), was performed by the Foreman at 11:05 A.M. at the Congress Yard, in violation of the Controlling Agreement, effective July 1, 1974, as amended.

Carrier contends the Carmen's Agreement has not been violated since they hold no Agreement providing the exclusive right to perform such work at Congress Yard. Carrier maintains the Carman only perform the disputed work as a third party to the HB&T and United Transportation Union Agreement.

Carrier also contends that no Carmen were available to perform the disputed work. Carrier maintains it was impractical to utilize Claimant to perform air tests at two locations at the same time. Moreover, Carrier asserts Claimant has failed to show that he is aggrieved. Carrier points out that Claimant was already on duty and under pay at the time.

Carrier argues that even if Carman were available, Second Division Awards 2697, 3614, 4693 and others have ruled that replacing an air hose and air brakes testing is work incidental to duties of Trainmen and not exclusively Carman's craft.

After a careful review of the record, the Board notes that the UTU does in fact have an Agreement that states "yardmen will not be required to couple...or to test air." However, the Carmen are not a party to the UTU Agreement and, as such, have no contractual support for their Claim to exclusive rights to perform air tests at Congress Yard.

Furthermore, the issues in the instant case have been addressed on numerous occasions concerning Rule 111, or similarly worded provisions. Three criteria must be met to sustain the Organization's Claim:

- 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; and,
- 3) That the train involved departs the departure yard or terminal.

Second Division Awards 5368 and Award 8140.

In the Board's view, the Congress Yard is not a "departure yard, work yard or passenger terminal," as provided by the National Agreement. Since the tests were not made in a departure yard or terminal, the Board concludes that the three criteria under Rule 111 were not met. In light of these findings, the other arguments made by the parties need not be addressed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois this 4th day of March 1987.