

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

(Brotherhood Railway Carmen of the United States  
( and Canada  
Parties to Dispute: (  
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the controlling agreement and the Railway Labor Act, as amended, when employees other than Carmen were instructed and permitted to couple the air hose and make the air brake test on a train of about forty-five (45) cars, which departed the facility of the Missouri-Kansas-Texas Railroad Company and proceeded to the terminal of the Missouri Pacific Railroad in Fort Worth, Texas.

2. That the Missouri-Kansas-Texas Railroad Company be required to compensate Carman Steve Robinson in the amount of four (4) hours pay at the proper pro rata rate for the date of October 19, 1983.

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.

As third party in interest, the United Transportation Union was advised of the pendency of this case, but chose not to file a Submission with the Division.

The Organization contends Carrier allowed Switchmen to do the work of Carmen at Carrier's Ney Yard facility in Ft. Worth, Texas on October 28, 1983.

Carrier admits that it allowed Switchmen to assemble forty-five (45) cars, couple air hoses and test air brakes after which this train proceeded to a Missouri Pacific Railroad yard, which is two and a half (2-1/2) or more miles distance in Ft. Worth.

It is uncontested that Carmen were on duty in the facility when the disputed work was performed.

The factual questions to be determined are whether or not the movement involved a train or "cut of cars" and whether the two yards are within one common terminal.

Article V of the Controlling Agreement states in pertinent part:

"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."

As interpreted by previous decisions of this Board, this Rule means that the work in dispute is to be done by Carmen if:

1. Carmen in the employ of the Carrier are on duty at the location;
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.

After a careful review of the record, the Board finds that all three of these tests were met in the instant case. Although Carrier argues this is nothing more than an interchange yard movement of cars within one terminal area, the record clearly shows the train departed for the purpose of making an interchange delivery to a separate yard of another Carrier; not a common terminal shared by the two Carriers. See Second Division Awards 6671; 10021; 10679.

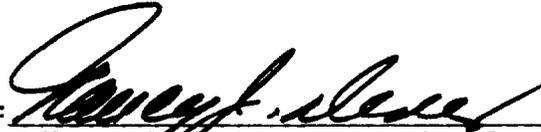
Since the movement involved forty-five (45) cars departing from one Carrier yard to that of another railroad, the Board is persuaded that the movement in question was a train by the commonly accepted definition as contemplated by Article V. See Second Division Award 10679.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

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

DISSENT OF CARRIER MEMBERS  
TO  
AWARD 11203, (DOCKET 10947-T)  
Referee Stallworth

The Majority has stated the issue in the second paragraph on Page 2 of the Award.

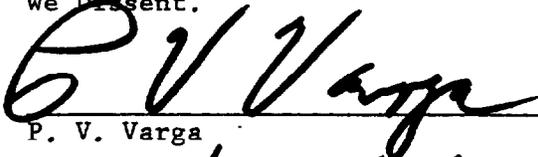
The movement of the 45 cars was admittedly an interchange move. It was not a road train and this was supported in the excerpt of the recommendation of Emergency Board 187:

"....in the immediate vicinity of the departure tracks where road trains are made up...."  
(Emphasis added)

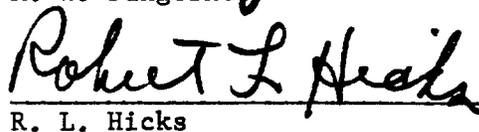
There was no road train departure from a terminal. Else, all interchange moves are road movements, something clearly never intended by the contracting parties and properly interpreted by this Board. Second Division Awards 5708, 7997, 9782, 10021, 10107.

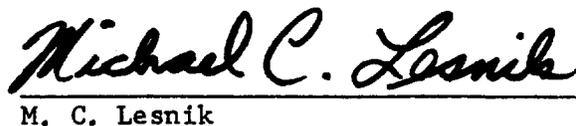
The Dissent to Award 10679, which is herewith incorporated in this Dissent, succinctly pointed out the error of that disposition and reliance on that decision in this matter compounds the original error.

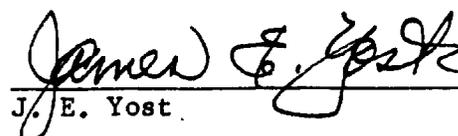
We Dissent.

  
P. V. Varga

  
M. W. Fingerhut

  
R. L. Hicks

  
M. C. Lesnik

  
J. E. Yost