Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11226
Docket No. 11180-T
2-B&O-CM-'87

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically, Rule 144 1/2, when from the date of March 5, 1984 through October 31, 1984, and continuing, Carrier has allowed trainmen to perform work contractually accruing to the carmen craft, coupling air testing, and inspection, at Brooklyn Junction, New Martinsville, Virginia, Seniority Point 32, which is a part of Seniority Point 32, Benwood, West Virginia.

2. That accordingly, Carrier be ordered to immediately halt such infringement upon Carmen's work at this location, and subsequently be ordered to compensate claimants herein for all time lost as a result of such infringement, as designated by original claim under date of May 3, 1984, continuing violations designated by letters under dates of June 28, 1984, August 22, 1984, September 24, 1984, October 12, 1984 and November 8, 1984, attached herewith.

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 Organization filed a Claim originally on behalf of 13 Carmen for work allegedly performed by Trainmen at the Carrier's Brooklyn Junction facility. Brooklyn Junction is part of the Carrier's Benwood, West Virginia, Seniority Point. This Claim was subsequently modified in a letter dated November 22, 1985. The Organization claimed 36 Claimants were involved, which is the entire Benwood, West Virginia, Seniority Roster. The Claim alleges a violation of Rule 144 1/2:

"(Established by Mediation Agreement
Case No. A-7030, September 25, 1964)

Coupling, Inspection and Testing.

(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.

(b) This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a 'double-over' and the first car standing in the track upon which the outbound train is made up.

(Established by Mediation Agreement,
Case No. A-9699, December 4, 1975)

(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 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.

(f) Any dispute as to whether or not there is sufficient work to justify employing a carman under the provisions of this Article shall be handled as follows:

At the request of the General Chairman of Carmen the parties will undertake a joint check of the work done. If the dispute is not resolved by agreement, it shall be handled under the provisions of Section 3, Second, of the Railway Labor Act, as amended, and pending disposition of the dispute, the railroad may proceed with or continue its determination."

The Claim was originally filed for occurrences beginning on March 5, 1984, and continuing through April 13, 1984. Again, the Claim was subsequently modified for occurrences beginning March 5, 1984 through October 31, 1984. In its initial letter of Claim, the Organization noted that this is a continuing violation, which is occurring on a daily basis until resolved.

The Carrier raised a number of threshold issues including the vagueness of the Claim, the additional Claimants, time being added to the Claim during its handling, and that the Organization originally claimed a violation of Rule 144 1/2, but on May 28, 1985, it also claimed an Article 2, Sections 1, 2, 3 violation. With respect to the vagueness of the Claim, the Carrier stated it does not show the specific work performed, the Claimants are not proper, Claim dates are different from point to point during the handling, and this results in a combination of Claims. The Board finds the Claim does sufficiently indicate the work in question to meet the specificity test required by the Controlling Agreement. The Carrier was well aware of what work was in question. This is not to say the volume of work may not be held in question later on. Regarding the Claimants not being proper, that will be addressed later in this Award. With respect to the Claim dates being different, the Organization noted in its original Claim that this was a continuing violation and, as such, until the Claim left the property, this is appropriate. This also applies to the argument concerning the combination of Claims. With

respect to the Organization's letter of November 22, 1985, which attempted to include the entire Seniority Roster in this Claim, the Board finds this was not handled on the property and, therefore, is not admissible. With respect to the Organization in its May 28, 1985 letter claiming violations of Article 2, Sections 1, 2, and 3, the Board likewise finds that this is not a proper amendment of the Claim and will not consider violations under this Section of the Controlling Agreement. Therefore, the Claim will proceed on its merits.

The criteria that has been established by this Board through numerous Awards in order for the Organization to prove its point is as follows: 1. Are there Carmen on duty? 2. Was the train made up in the yard or terminal? 3. Did the train depart from the yard or terminal? Clearly, in the instances cited by the Organization, the Carrier did not argue that Points 2 and 3 of the above criteria were not met. The remaining criteria is, "Was there a carman on duty?"

It is unrefuted that no Carmen have been employed at Brooklyn Junction since 1972, and, since at least that time, train crews have performed the disputed work at that location with one exception. The Organization contends that a Carman from Benwood reports to Brooklyn Junction on a daily basis on the first shift to inspect the Mobay District Run. While the Carrier denied that a Carman reports to Brooklyn Junction on a daily basis, it did not dispute the assertion altogether. The Organization also stated that Brooklyn Junction is part of the Benwood seniority point and that there is enough work to employ at least one Carman there.

During conference on the property, the General Chairman made a request for a joint check which was denied by the Carrier on the basis Rule 144 1/2 limits the locations subject to joint check requests. According to the Carrier, those locations are the points where Carmen are currently employed and on duty or where the Carrier had Carmen performing the work of coupling, testing and inspecting, as of July 1, 1974, in reference to paragraph (c), or as of December 1,1975, in reference to paragraphs (d) and (e).

Upon complete review of the evidence, the Board finds that the Organization has not met its burden of proof which requires a demonstration that enough work was present in order to justify the permanent assignment of a Carman. As noted above, for an undisclosed period of time the Carrier has engaged in a regular practice of having a Carman employed at Benwood inspect the Mobay District Run at Brooklyn Junction. No other work was identified by the Organization. Had the Organization established that this practice was in effect on or before December 1, 1975, in the Board's view, the Carrier would have been obligated to grant the General Chairman's request to undertake a joint check of the work done at Brooklyn Junction pursuant to Rule 144 1/2 (f). Inasmuch as the Organization did not even contend that such practice was in existence as of December 1, 1975, it failed to satisfy the burden of proof required to establish a violation of Rule 144 1/2 (f). Therefore, the Board has no alternative but to deny the Claim.

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 18th day of March 1987.