Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11284
SECOND DIVISION Docket No. 10968-T
2-SOO-CM-'87

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Soo Line Railroad Company

Dispute: Claim of Employes:

1. That under the current agreement, the Soo Line Railroad Company violated Rules 27, 28, 94, 99, and 100 of the Shops Craft Agreement and Article 5 of the September 25, 1964 Agreement as amended by Article 6 of the December 4, 1975 National Agreement and the understanding of F.R.A. Rule 232.12 par. (D) when the Soo Line R.R. Co. denied its carmen employees working in the Shoreham Shops Yards, a departure yard, the carmens work of giving a air set and inspect piston release, when engines couple onto set of cars or when engine crews doubles one set of cars onto another set of cars, prior to departing from the departure yard.

2. That accordingly, the Soo Line Railroad Company be ordered to compensate carmen inspectors K. Johnson on dates of October 26, November 14, 15 twice on 16 and November 22, 1983, S. Broadhead on dates of October 27, November 9 and 22, December 6, 7, 8, and 10, 1983 for penalty time of one hour at time and one half carmens rate of pay to each person for dates shown, when the Soo Line Railroad Company denied the carmen their contractual right to perform the carmens work, by allowing the trainmen to perform the carmens work of air testing and air brake release inspection, when train departs from the departure 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 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 pendancy of this case, but chose not to file a Submission with the Division.

These Claims arose because a yard crew performed a set and release test on a train. This was done by the yard crew after the train had been made up and tested with yard air by Carmen. The Claim alleges the violation of numerous Rules, primarily Rules that describe work of Carmen, such work to include testing of air brakes. This set of Rules also includes Article VI which reads in pertinent part:

> "ARTICLE VI-COUPLING, INSPECTING AND TESTING
>
> Article V of the September 25, 1964 National Agreement is amended by designating the two existing paragraphs (a) and (b) and by adding the following new paragraph (c), (d), (e), (f), and (g);
>
> (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."

The Claim is made, based on the description of work of Carmen in the cited Rules, that Carmen have exclusive rights to the testing of brakes. However, this contention is not sound. Article VI(a) gives the work to the Carmen only under certain conditions. If the other Rules gave the work exclusively to the Carmen craft, Article VI would be a nullity. It is sound arbitral practice that an existing part of a negotiated agreement should not be read as a nullity. Therefore, the Claim to the work must rest on the provisions of Article VI.

One of the pieces of correspondence from the Organization, a Notice of Appeal of 1-11-84, stated in pertinent part:

> "The Carmen do understand that trains under twenty miles do not need a set and release after the Carmen have finished the yard air. The train crews have been instructed to get on their trains and go, but they have been requesting and performing sets and releases on these trains. We must contend that if the train crews insist on doing a set and release before departure, then the Carmen are to be used to perform our work of the set and release."

In its answer to this Claim, the Carrier initially took the position that the crew was voluntarily doing this testing and was not ordered to do so. However, this position is relinquished in its brief to this Board.

The Carrier took the position that Article VI is not applicable because the trains in question are not departing from a departure yard, coach yard or terminal. One of the necessary elements to exclusivity under Article VI is that the work be done "in the departure yard, coach yard, or passenger terminal." Although this point was raised in many of the pieces of correspondence on the property, it was never established by the Organization.

Numerous Awards have held that the Carmen have the right to the work if they can establish the necessary elements. There must be Carmen on duty, in a departure yard, coach yard or passenger terminal from which trains depart, and the work must be required by the Carrier.

The Organization established that there were Carmen on duty and that the work was required by the Carrier. However, there is no proof that the yard was a departure yard. It is the burden of the one who raises the Claim of a Rule violation to establish to this Board the facts necessary for a favorable decision. The Claim must be denied for failure of proof.

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 1st day of July 1987.