Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11408
SECOND DIVISION Docket No. 11081-T
88-2-85-2-198

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employes:

1. That under the provisions of the current working Agreement the Carrier erroneously and improperly instructed and/or allowed other than carmen to couple air hoses incidental to inspection and performing the air brake tests on numerous trains subsequent to May 28, 1983, thereby violating Rules 36, 98 and Article V of Appendix No. 7 of the September 1, 1974 Agreement as subsequently amended.

2. That accordingly the Carrier be ordered to additionally compensate Carmen Victor Soto and Carl Hendrick each in the amount of eight (8) hours at their applicable hourly rate of pay, each day, commencing May 28, 1983 and to continue in like amount for each day subsequent to May 28, 1983 until correction and payment have been made.

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 dispute, but chose not to intervene.

Claimants are regularly employed as Carmen by the Carrier, on the first shift at its Albuquerque, New Mexico inspection and repair point. Citing a lack of work, Carrier abolished its car inspector and repair track positions at Albuquerque, effective May 28, 1983. Subsequent to that date, train crews made inspections and air brake tests. The Organization thereafter filed a Claim on Claimants' behalf, challenging Carrier's use of Trainmen, instead of Carmen, to perform the disputed work.

The Organization contends that under Rule 98 of the Agreement, the Classification of Work Rule, the disputed work specifically and unambiguously belongs to Carmen. Moreover, prior to May 28, 1983, Carmen historically performed this work on the property; the disputed work also is generally recognized as Carmen's work. The Organization further points out that Rule 36(a) of the Agreement specifies that "[n]one but mechanics or apprentices regularly employed as such shall do mechanics work per the rules of each craft," and train crews are not regularly employed as Carmen.

The Organization argues that Carrier unilaterally and arbitrarily abrogated the Agreement by using train crews to perform the disputed work, thereby damaging Claimants. The Organization asserts that Article V of Appendix 7 of the September 1, 1974, Agreement provides that where Carmen are employed and on duty, the work at issue shall be performed by Carmen. Claimants were on duty and are contractually entitled to compensation as set forth in the Claim. The Organization therefore contends that the Claim should be sustained.

Carrier argues that neither Rule 36(a) nor Rule 98(a) provide that the disputed work belongs exclusively to Carmen. Carrier asserts that this Board has held that such work does not exclusively belong to Carmen, but also has been performed by Trainmen and Yardmen; these prior Awards involve rules that are nearly identical to the rules cited in this dispute. Carrier contends that Rule 98 refers to mechanical inspection of the air brake equipment, involving repairs and maintenance; the Rule does not include air brake testing and inspection in connection with the movement of trains by train crews as they perform their work. Carrier further asserts that Carmen have not exclusively performed the disputed work. Historically, both Carmen and Trainmen on this property have performed the work; moreover, Trainmen have performed this work at numerous locations where Carmen have been assigned on the repair track or in the train yard. Carrier additionally contends that in 1984, the Organization proposed a revision to the Agreement that included a grant to Carmen of exclusive rights in work such as the work at issue here. Carrier argues that this proposal constitutes an admission that Carmen do not have exclusive rights to the disputed work.

Carrier then refers to Article V of the September 25, 1964, Agreement, which provides that in certain narrowly defined circumstances, Carmen shall perform the disputed work. Carrier asserts that Article V, as amended, was intended to freeze the status quo relative to the allocation between Carmen and operating employees of inspection, testing, and coupling work. Carrier argues that if Rules 36 and 98 already made an exclusive grant of such work to Carmen, there was no need for the parties to negotiate and agree on Article V; Rules 36 and 98 therefore do not grant Carmen an exclusive right to the disputed work. Carrier then points to an action brought in Federal District Court, in which the Organization sought sanctions against Carrier for allowing Trainmen to make inspections in San Diego. In that case, the Organization recognized Article V as controlling, not Rules 36 or 98.

Carrier contends that in accordance with Paragraph (c) of Article V, car inspector positions at Albuquerque were abolished because there no longer was enough inspection, testing, and coupling work to justify retention of these positions; after the positions were abolished, operating employees performed all such work. Carrier points out that the Organization does not dispute that there was insufficient work to justify retention of these car inspector positions; the Organization never requested a joint check or filed a claim about this matter.

Carrier finally asserts that the Claim for eight hours' pay per day for each Claimant is excessive. Carrier argues that both Claimants were fully employed by Carrier until they both retired; neither suffered any wage loss as a result of Carrier's action. Moreover, any continuing claim for compensation necessarily ceased as of the Claimants' retirement in May, 1984. Carrier also argues that because Claimant Soto was on a medical leave of absence during part of the Claim period, he is not entitled to any such compensation for that time period. The Carrier contends, however, that the Claim should be denied in its entirety.

This Board has reviewed the evidence in the record, and we find that the Organization has not presented sufficient evidence to prove that the Carrier acted in violation of the Agreement when it allowed employees other than Carmen to couple air hoses and perform the air brake tests. Hence, the Claim must be denied.

This Board has held, on several occasions in the past, that the work at issue does not belong exclusively to Carmen and has in the past been performed by other employees. Moreover, it is clear that inspection positions were abolished at the location because of insufficient work. The work in question had to be performed on the occasion in question, and the Carrier did not violate the Agreement by having employees other than Carmen perform that 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 6th day of January 1988.