

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11418  
Docket No. 11337-T  
88-2-86-2-178

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

(Brotherhood Railway Carmen of the United States  
( and Canada

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carman G. LaScala and A. Golland, Council Bluffs, Iowa, were deprived of work and wages to which they were entitled when the Chicago & North Western Transportation Company violated Article V of the Agreement of September 25, 1964, as amended December 4, 1975, and Rules 15, 30, 58 and 76 of the controlling Agreement when carrier assigned other than carmen to perform the work of coupling air hose and making terminal air brake test on Extra 4447 on October 21, 1985 and on Extra 4420 on November 12, 1985 at Council Bluffs, Iowa.

2. Accordingly, that Carman G. LaScala and A. Golland be compensated in the amount of four (4) hours each at the straight time rate of pay amounting to \$52.84.

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 employees 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 of Interest, the United Transportation Union was advised of the pendency of this dispute, but chose not to file a submission with the Division.

The instant dispute involves two Organization claims alleging Carrier's improper assignment of coupling air hose and making terminal air brake tests. In the first instance of October 21, 1985, Train Extra 4447 departed from the Chicago and North Western's Council Bluffs Terminal to the Union Pacific Railroad. In the second instance Train Extra 4420 departed on November 12, 1985. There is no dispute that a Trainman coupled the air hoses and performed the air brake tests on twenty one cars of Train Extra 4447 and that a Trainman coupled air hoses on eighteen freight cars of Train Extra 4420.

The central dispute is based upon Article V and past Awards. Article V states in pertinent part:

"(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 carmen."

The past Awards of this Board with respect to the rights of Carmen, reserve the coupling of air hoses and performance of air brake tests to Carmen when specific criteria as stated in the above Rule and set forth in Second Division Award 5368 are met. The three criteria set forth are:

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.
3. The train involved departs the departure yard or terminal.

By established Board precedent, although both Carmen and Trainmen have done this work, Carmen have exclusive rights when the conditions set forth in Award 5368 are met.

The facts establish that the Claim of the Organization was denied on property by the Carrier. With respect to Extra Train 4447, the Carrier maintained it was "not a departure type train." With respect to Extra Train 4420, the Claim was denied in that "the carmen on duty were not readily available and were performing work elsewhere."

This Board has carefully reviewed the record on property and the numerous Awards submitted by both parties to this dispute. The Carrier denied that Extra Train 4447 was a departure type train. To carry its burden, the Organization had to establish that Extra Train 4447 was a departure train and not in yard transfer. As we have consistently held, the Organization has the burden of establishing a prima facie case with substantial probative evidence. If such Agreement violation is established, then the burden shifts to the Carrier to establish its position and/or prove any affirmative defense. A careful review of the Organization's evidence fails to establish the third criteria, that Extra Train 4447 was a departure train. That part of the Claim must be denied for lack of proof.

With respect to Train Extra 4420 the central issue is whether or not Carmen on duty but assigned work in the Pool Yard should have been called to perform tests in the Train Yard. On property we find no evidence that Carmen were in the departure Train Yard. Claimant Gollard states that he was not in the Train Yard. A review of past statements of Carmen do not establish the necessary facts to sustain Organization's Claim. It fails to meet the first criteria (See Second Division Awards 10467, 11039, Public Law Board 2512, Award 70).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1988.