Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11422
SECOND DIVISION Docket No. 11362-T
88-2-87-2-30

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States and Canada
(The Atchison Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated Rules 36(a) and 98(a) of the September 1, 1974 Agreement, as amended, between the Atchison, Topeka, and Santa Fe Railway Company and its employes represented by the Brotherhood Railway Carmen of the United States and Canada when they abolished the Car Inspectors' positions and instructed and/or allowed other than Carmen, specifically train crews, to make up trains, couple air hoses, incidental to inspecting, and making air tests to trains.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Carman Andy V. Hernandez in the amount of four (4) hours at pro rata rate of pay each day, retroactive to August 20, 1985, and to continue in like amount for each subsequent day until correction and payment are made for violations beginning August 20, 1985.

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

Carrier abolished Car Inspector positions at close of shift August 19, 1985, in the Pueblo train yard. The Claimant had, prior to abolishment, made up trains, coupled air hoses, inspected and given brake tests to trains. Subsequent to abolishments, the Organization alleges that work contractually reserved to Carmen was assigned to other crafts in violation of the Agreement. Specifically, the Organization alleges violation of Rules 36(a) and 98(a) which state in pertinent part:

"Rule 36(a)

None but mechanics or apprentices regularly employed as such shall do mechanic's work per the rules of each craft except foremen at points where no mechanics are employed.

Rule 98(a)

Carman's work shall consist of . . inspecting all passenger and freight cars, both wood and steel, . . . inspection work in connection with air brake equipment on freight cars . . ."

As per these Rules the Organization alleges that subsequent to abolishment, Carrier had others perform work which was Agreement protected to Carmen.

During the progression of this Claim on property and in response to Carrier denials, the Organization raised numerous other issues. It was argued that Carrier was circumventing the Agreement. Under other Rules; as long as there were Carmen assigned to the train yard, the work belonged to Carmen. By abolishing the Car Inspector positions, the Carrier was negating the provisions. Even further, since Claimant was still assigned to the repair track at Pueblo, in the absence of Car Inspectors in the train yard, Claimant should have been called to perform Carmen's work (Second Division Award 9932).

The Carrier denied that either Rule (supra) exclusively protected the disputed work to Carmen. It noted past Awards in which Carmen had been assigned as inspectors or at the repair track and Trainmen historically performed the air brake inspection and testing work without any Claims filed. Carrier asserts that it has violated no Rule of the Agreement when it abolished the Claimant's position.

This Board has carefully reviewed all of the issues and Rules considered on property and before this Board. The Organization has the burden to prove with probative evidence that the Carrier violated Rules 36(a) and 98(a).

The Carrier is obligated to continue to have Carmen do the work if it properly belongs to them. As noted on property, but not made a part of the Claim, Article V of the 1964 National Agreement as amended, specifies conditions for the use of Carmen. One of the three conditions requires that Carmen be on duty at the departure train yard. All Carmen positions were abolished. None was on duty in the train yard. The Organization asserts that the Claimant should have been called from the repair yard to perform necessary inspections and supports its assertion with Second Division Award 9932. In addition, the Organization alleges that Carrier is circumventing the Agreement and points to other Awards which have so held (Second Division Awards 10117, 10892, 10893, 10920).

The record clearly shows that train crews are performing the work previously done by Carmen Inspectors. That is not disputed. A careful reading of record and Agreement finds no argument on the property over sufficiency of work or reinstatement of position.

The central issue at bar is whether the Carrier properly abolished the position and circumvented the Agreement by removing Carmen's work in violation of Rules 36(a) and 98(a), thereby allowing such work to be performed by Trainmen.

In the instant case, the Board finds no evidence that either Rule has been violated. The Organization has argued on property that the abolishment of Car Inspectors and subsequent use of Trainmen for coupling and air hose tests is a circumvention of the Agreement. This Board rules on probative evidence only. Nowhere in the record is there evidence to support a circumvention of the Agreement. There just is no proof. Organization's assertions are simply assertions no matter how strongly and sincerely held. If such could be proven, whereby the Carrier had arbitrarily abolished positions while "sufficient" work existed it could serve as a basis for a sustaining Award. That however, is not the Claim at bar. The Claim at bar is a violation of Rules 36(a) and 98(a) which cannot be sustained.

As in all such cases, the weight of the evidence to substantiate the Claim rests with the moving party. Evidence that the work was exclusively Carmen's work is lacking. Specific factual evidence that on this property Carmen have a right to be called from the repair track to the train yard to perform such work, to the exclusion of Trainmen, is lacking. The Organization has no Rule support or practice to show Carrier requirement to preclude Trainmen from testing in favor of Carmen in the instant circumstances. Moreover, a search of the record for probative evidence that such work as herein disputed has been exclusively reserved to and performed by Carmen has led to the opposite conclusion. This disputed work has been performed by Trainmen as well as Carmen. The evidence does not establish a violation of either Rule in dispute. Consistent with past Awards of this Division the claim is denied for lack of proof (Second Division Awards 11208, 11209, 11210, 11211, Labor Members' Dissents and Carrier Members' Answer thereto).

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 20th day of January 1988.