Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11493
SECOND DIVISION Docket No. 11344-T
88-2-87-2-6

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States and Canada
(
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. That the Duluth, Missabe and Iron Range Railroad Company violated the terms of our current Agreement, in particular Rules 29A, 57 and Article V(a).

2. That accordingly, the Duluth, Missabe and Iron Range Railroad Company be ordered to compensate the following DM&IR carmen in the number of hours listed for the appropriate dates listed:

D. R. Kolenda	4 hours	November 4, 1985
W. J. Stauty	4 hours	November 6, 1985
W. J. Stauty	4 hours	November 15, 1985
W. J. Stauty	4 hours	November 20, 1985
W. J. Stauty	4 hours	November 25, 1985
W. J. Stauty	4 hours	December 6, 1985
W. J. Stauty	4 hours	December 23, 1985
D. D. Kolenda	4 hours	November 11, 1985
D. D. Kolenda	4 hours	November 13, 1985
D. D. Kolenda	4 hours	November 22, 1985
D. D. Kolenda	4 hours	November 27, 1985
R. C. Goerts	4 hours	October 29, 1985
R. C. Goerts	4 hours	November 8, 1985

All time at the straight time rate."

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.

The issue to be decided in this case is whether or not the train crew members of a turnaround road freight assignment may properly be required to test the air brakes on cars picked up in their train at an intermediate point of their turnaround road trip.

The record reflects that the United Transportation Union was duly notified of the pendency of this dispute and afforded an opportunity to file a Submission, but did not do so.

The train in question originated at Carrier's Proctor Yard and proceeded northbound on its road trip to Gilbert, MN, delivering and picking up cars enroute as required. At Gilbert, the turning point of the assignment, the crew picked up cars and proceeded to Keenan Yard where additional cars were picked up for the southbound trip. It is at Keenan Yard that these claims arise.

The cars picked up by the road freight crew at Keenan Yard were brought to Keenan Yard by various switch crews. According to the case record, these cars were assembled by the switch crews for road pickup after which Carmen inspected them and coupled the air hoses. When the road crew arrived, they picked up the previously assembled and inspected cars, made an intermediate terminal air brake test and departed. It is this air brake test that is the basis of complaint.

The pertinent Agreement language is found in Article V(a) of Supplement No. 3 which states:

> "(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."

This Agreement provision is national in scope and has been interpreted by countless tribunals. Both the Organization and Carrier have cited numerous Awards dealing with various applications of this Article V(a). We have examined and considered all of these decisions. In addition, the Organization has argued that, in these claims, "... the cars picked up at Keenan yard were subject to an initial terminal air brake test as required under part 232.12 of the Power Brake Law." The Organization quoted the pertinent language of the Power Brake Law.

Carrier, on the other hand, has rejected the "initial terminal air brake test" argument and has insisted that this is an intermediate point of the train crew assignment and there is no requirement for an "initial terminal

air brake test" and none was performed. In addition, Carrier points to a fifteen or more year history of pickups by this same road freight assignment at this same yard location in which no initial terminal air brake test was performed and neither were any claims presented by Carmen for the air brake tests which were performed by the train crew. This history is not challenged by the Organization.

The genesis of these claims is found in an operational change initiated by Carrier in June, 1985, and continued for approximately four months during which time Carrier assembled the pick up for this road freight train on a yard track which had a yard air connection. During this period, Carmen were used to "... make the intermediate air brake test on this block of cars in advance of the MRF pick up ...." In October, 1985, Carrier reverted to assembling the pick up on a yard track which had no yard air connection and the train crew resumed making the intermediate air brake test as before. The penalty claims followed.

This Board, of course, has no authority or jurisdiction to interpret the Federal Power Brake Law. We will make no further comment on that portion of the arguments in this case which relate to such Federal Law.

The countless interpretations which have been issued in connection with this nationally applicable agreement provision have clearly established that where air test work is performed in connection with the Carman's regular duties of mechanical inspection and repair, such work is reserved to Carmen. However, where, as here, the air test work is incidental to the pick up of cars by the road freight crew, such work is not reserved exclusively to Carmen. (Second Division Awards 10885, 10886.) The fact that the location in this case is an intermediate point of the road crew's assignment is also an important consideration in the interpretation of Article V(a). In this regard, we agree with the opinion expressed in Award 10823 of this Division, and have applied its principles to the facts of this case.

Under the circumstances as found in this case, there was no violation of the contractual rights of the Carmen, and the claims as presented are denied.

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 15th day of June 1988.