Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11563
SECOND DIVISION Docket No. 11414-T
88-2-87-2-55

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
(
(Norfolk & Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk & Western Railway Company violated Rule 103 of the current Agreement and Article V of the September 25, 1964 Agreement and Article VI of the December 4, 1975 Agreement when, beginning on December 14, 1985, trainmen were assigned to couple and install and remove ground air hoses on trains in departure yard several cars from the head car in the track when Carmen were on duty and available. Such work belongs to the Carmen Craft by virtue of the above mentioned rule and agreements practiced at Williamson, West Virginia for many, many years.

2. That because of such violation the Norfolk and Western Railway Company be ordered to compensate Carman C. M. Trivette four (4) hours pay at the pro rata rate of pay for the above mentioned date and such work be restored to Carmen by the Carrier reestablishing certain Carmen's positions at Williamson, West Virginia.

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 and did not file a Submission with the Division.

Claim of the Organization that the work of removing ground air from trains was performed by Trainmen in violation of various Rules, including Rule 103. The Organization points out that Carmen were on duty, that the trains

tested were in the departure Transportation Yard and that they departed on December 14, 1985, after Trainmen removed ground air. As evidence, the signatures of Carmen are submitted attesting to the fact that "removing all Ground Air on all Trains..." is Carmen's work.

Carrier disputes the Claim on both procedural and substantive grounds. On procedural grounds, it maintains that the Claim is based on an occurrence which is nearly three years old. As such it is beyond the time limits of the filing of a grievance. On substantive grounds, it argues that it has historically been the practice on this property for Trainmen to remove ground air from trains in the Transportation Yard.

This Board has carefully reviewed the record in this case. It finds no procedural violation as the Claim was filed within sixty days of the alleged violation. On the merits, the Board finds sufficient probative evidence to substantiate that the Carrier has violated the Agreement. It is not disputed that Carmen were on duty, and that the trains in dispute were tested and departed a departure yard. The Board does not find a direct rebuttal by the Carrier of the signed statement by Carmen that the removal of ground air has always been Carmen's work. Evidence in the record as argued by the Carrier to dispute this point is not compelling.

On the whole of this record, the evidence clearly indicates that the disputed work belongs to Carmen. While this Board finds it difficult to identify Agreement violations and then deny compensation, it must do so here under the principle of the de minimum doctrine and the circumstances at bar. The record on property indicates that the removal of ground air was done to two trains. It was not rebutted by the Organization that the work herein disputed "takes less than three (3) minutes to perform." Consequently, it is not appropriate for this Board to order compensation for four (4) hours pay. Nor is it within the Boards jurisdiction to order the reestablishment of positions.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.