

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11693
Docket No. 11458-T
89-2-87-2-115

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

1. That the St. Louis Southwestern Railway Company violated the controlling agreement and the Railway Labor Act, as amended, when other than carmen (brakemen) were instructed and permitted to couple air hoses between cars in outbound train PBDAT, with engine 5106 and caboose SP 1741 located in track 5, Pine Bluff, Arkansas, which is a terminal and departure yard.

2. That the St. Louis Southwestern Railway Company be required to compensate Carman T. E. Hale in the amount of four (4) hours pay at the proper pro rata rate for the date of February 9, 1986.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On February 9, 1986, during the 7:00 A.M. to 3:00 P.M. shift at the Carrier's Pine Bluff, Arkansas, train yard, the following incident occurred:

"...train PBDAT, with engine 5106 and cab SP 1741, located in track 5, was called at 12:20 p.m. and departed at 1:10 p.m. This train had two bad order cars, BA 835117 and CR 71696, thrown out. Brakeman was instructed by C. L. Worthern to make the air joints between BO 835111 and CR 230058, and GNA 342174 and CR 716958 at 1:00 p.m. and 12:52 p.m. This is not a double over nor a movement within the yard."

The Organization argued that the making of air joints is work reserved exclusively to Carmen, and that this order was a violation of Article V, Addendum 2, of the September 25, 1964, Agreement. It filed a claim with the Carrier on February 14, 1986. The Carrier denied the claim, advising the Organization that:

"...The Carmen on duty were working on ESHOT and were unavailable to make the air hose couplings on the above mentioned cars."

The claim was appealed to Labor Relations, who also denied it, advising the Organization that:

"The coupling of air hoses referred to in this claim resulted from a switching movement and is not a violation of Addendum No. 2, Article V, of the current agreement."

In the Carrier's Submission in the instant case, it called the Board's attention to what is claimed was a move by the Organization to amend its initial claim. The original claim, dated February 14, 1986, read:

"On February 9, 1986, train PBDAT, with engine 5106 and cab SP 1741, located in track 5, was called at 12:20 p.m. and departed at 1:10 p.m. This train had two bad order cars, BA 835117 and CR 716196, thrown out. Brakeman was instructed by C.L. Worthern to make the air joints between BO 835111 and CR 230058, and GNA 342174 and CR 716958 at 1:00 p.m. and 12:52 p.m. This is not a double over nor a movement within the yard."

However, the claim submitted to this Board, dated August 11, 1987, stated:

"That the St. Louis Southwestern Railway Company violated the controlling agreement and the Railway Labor Act, as amended, when other than carmen (brakemen) were instructed and permitted to couple air hoses between cars in outbound train PBDAT, with engine 5106 and caboose SP 1741, located in track 5, Pine Bluff, Arkansas, which is a terminal and departure yard."

According to the Carrier, the Organization at no time alleged in its original complaint on the property that PBDAT was an outbound train, nor identified track 5 as being in the Pine Bluff, Arkansas, yard and the terminal where track 5 was located as being a terminal and departure yard.

As to the procedural issues raised by the Carrier in the instant case, the Board notes that any argument that the Organization wished to present on behalf of its position must have been raised in the local handling of the claim between the parties on the property. It is impermissible to now submit new arguments or evidence to this Board. This ruling arises from Circular 1, which reads in pertinent part:

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

It was also illustrated in Third Division Award 24977, which reads:

"...It is new argument and barred from our consideration, pursuant to the requirements of Circular No. 1. As new argument we are precluded by our rules from judicially considering arguments that were not first raised on the property, and their averments regarding the timeliness of the unjust hearing are inadmissible now."

This claim, therefore, must be limited to only those issues that were originally heard on the property.

In respect to the substantive issues raised in the instant claim, Article V, Addendum 2, which was cited in this case, reads in pertinent part:

"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."

However, in respect to the interpretation of this Article, the Board in Second Division Award 5368 held:

"There is nothing ambiguous in the language of Article V; the interpretation is entirely dependent upon the factual situation involved in each independent dispute."

In Second Division Award 10844, the Board spoke to the factual situation in that claim, and also cited Rule 144 1/2:

"The Board has held on numerous occasions that under Rule 144 1/2 (or similarly worded provisions) three criteria must be met to sustain the kind of claim made by the Organization, namely: 1) the Carman in the employ of the Carrier is on duty, 2) the train was tested, inspected and/or coupled in a train yard or terminal, and 3) the train involved departs a yard or terminal....The Board has further held on numerous occasions that the making of air tests is work that is incidental to the duties of train crews handling their trains and not exclusively the work of Carmen....

Here, it is undisputed that at the time at issue, the Carman was not on duty. The three criteria required under Rule 144 1/2 therefore cannot be met. Coupled with the fact that the testing work is not exclusively the Carmen's, the Claim must be denied."

Similarly, Second Division Award 10889 also found:

"The Board essentially agrees with the Organization that the three key points normally required to sustain a claim, such as here, were met: 1) Carmen were on duty, 2) the train was tested, inspected or coupled in a departure yard or terminal, and 3) the train involved left the departure yard or terminal. That is what occurred here and the Carmen properly performed their required work prior to the time that the

train pulled to another track to set out the bad order cars....The issue before the Board is whether the making of the air test (after the train was pulled out to set out the bad order cars) is exclusively the work of Carmen, even if such test is solely to determine if the brakes have applied to the wheels of cars. The preponderance of Awards interpreting Article V have found that, under these or similar circumstances, such work, as here disputed, may be performed by Train Crews as an incidental part of their duties. We so find here."


Based on the evidence before it, this Board concurs with the preponderance of Awards that interpret Article V to mean that such work as disputed in the instant claim may be performed by train crews as an incidental part of their duties.

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 22nd day of March 1989.

1

2

3