Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11790
SECOND DIVISION Docket No. 11622-T
89-2-88-2-137

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the Agreement the Carrier improperly assigned the train crew to couple air hoses, inspect and test the brakes on P.O. 1A and P.O. 4A at Appalachia, Virginia on December 31, 1986.

2. That accordingly, the Carrier be ordered to pay Carman E. G. Mullins eight (8) hours' pay at the overtime 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 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 but chose not to file a Submission with the Division.

On December 31, 1986, the train crews of P.O. 1A and P.O. 4A coupled air hoses, inspected cars, and made brake tests on the trains at the Transloader at Appalachia, Virginia. New Year's Eve was a holiday and the regularly assigned Carmen who would have done the work on the first shift on December 31st were off. Because the Carrier had not called the first shift Carman to do the work at overtime rate a claim was filed on grounds that the Carrier was in violation of Rule 148 and Article VI of the operant Agreement. According to the claim the work belonged to Carmen and it should not have been transferred to another craft without it first being offered to a Carman.

In denying the claim the Carrier's argument is that a Carman was not assigned to do the work on this holiday because there was no Carman available. No Carman was available because no Carman was on duty. No Carman was on duty because the Carman who would normally cover this work was home on holiday pay.

The instant claim centers, therefore, on the issue of whether the Carrier, under language of the Agreement, is required to call a Carman to do Carmen work when a Carman is off-duty on holiday pay, or whether under such conditions the Carrier may go to another craft to do the work in question.

The Agreement language in question is the following.

"COUPLING, INSPECTION AND TESTING

RULE 148. 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 rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a 'double-over' and the first car standing in the track upon which the outbound train is made up.

ARTICLE VI - COUPLING, INSPECTION AND TESTING OF THE NOVEMBER 19, 1986 NATIONAL AGREEMENT

At locations ---------- where carmen were performing inspections and tests of air brakes and appurtenances on trains as of October 30, 1985, carmen shall continue to perform such inspections and tests and the related coupling of air, signal and steam hose incidental to such inspections and tests. At these locations this work shall not be transferred to other crafts."

Close scrutiny of the record shows that the Carrier does not deny that first shift work was work that belonged to Carmen. There is no dispute over this point in the handling of this claim on property. The Carrier does state that "historically" train crews had done the work at bar on third shift and, crucial to its argument in this case, "...also at other times when Carmen (were) not available." The latter could mean a variety of things. It could mean that there may not have been Carmen assigned to a given shift at all, such as the third shift which the Carrier intimates was true, while not proving this point. But this case is not about that shift and is distinguishable from such argument. It is about the first shift, and a Carmen who was allegedly not "available" for work because he was off because of a holiday. Does the language of the Agreement permit the Carrier to apply the "availability" criterion to such circumstance?

It is the view of the Board that the controlling language is found in Article VI of the 1986 National Agreement. There the parties agreed, in language which must be construed as clear and unambiguous, that when work of the type in question is performed by Carman as a matter of past practice it is their work as a property-right, and "...at (such) locations this work shall not be transferred to other crafts." The Board is not free to give obtuse and obscure interpretations to clear language of contract. It can only reasonably conclude, therefore, that the work should not have been transferred to another craft. If the work in question happens to be on a holiday, and the Carman normally doing the work is off duty on pay, the proper application of this language requires the Carrier to at least offer the work to a Carman at overtime rate. In the instant case, the Carrier had not provided such option. The Claim must, therefore be sustained. Since work which the Claimant would have performed would have been at overtime rate, relief requested shall be at such rate. The record is silent on how much time it actually took to do the work. Relief at overtime rate shall be, therefore, for eight (8) hours as requested.

The above conclusion on merits is similar to that which the Board arrived at in Second Division Award 10117. In that case, as in this one, the Board concluded that work rights are not lost on a shift wherein they are normally exercised because of "laying-in" for a holiday. Likewise Second Division Award 10920, and more recently 11666 arrived at substantially the same conclusions with respect to work rights when Carmen are off because of holidays, albeit the circumstances of the latter two cases are not altogether parallel with the one here at bar.

The Board is aware that there is another line of cases emanating from this Division wherein the Board ruled on claims similar to the instant one in a manner which appears to be contrary to the conclusions set forth above on merits. The Board has restudied those cases which include, particularly, Second Division Awards 10467 and 10680. The conclusions of both these Awards are based on the "conditional" language found in the operant Agreements which parallels that of Rule 148 cited in the foregoing. Both Awards argue that the language requiring Carmen to be employed and "on duty" permits Carriers to go

to other crafts if Carmen, normally performing the work, are off on holiday pay (Award 10467 references earlier Second Division Award 5460 also to that effect). The Board notes that these Awards predate Article VI of the 1986 National Agreement amending Rule 148 of the operant Agreement which the instant Award has concluded is controlling in this case.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of November 1989.