

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/Division of TCU
(CSX Transportation, Inc.
(The Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

1. That the Louisville and Nashville Railroad Company, hereinafter referred to as the Carrier, violated the Agreement when they assigned or allowed other than carmen to couple, test, and inspect air brakes on trains in Loyall, Kentucky train yard on September 27, 1987.

2. And, accordingly, the Carrier should be ordered to additionally compensate Carman C. H. Fraley, hereinafter referred to as the Claimant, for eight (8) hours at time and one-half rate, as a result of said violation.

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.

Claim of the Organization is that Carrier violated the Agreement, when on September 27, 1987, it permitted train crews to perform their own brake test on two different trains. The Organization argues that the coupling, testing and inspection of air brakes at Loyall, Kentucky, was Carman's work.

The Carrier initially denied the Claim in that Carmen do not have exclusive rights to brake tests. In its letter dated December 5, 1988, the Carrier stated that the "train crews involved only performed a set and release test" and denied any violation. In its last letter dated August 7, 1989, Carrier states that Carmen were not on duty anywhere at the time of the incidents at bar.

A review of this record fails to establish the probative evidence necessary to support the Organization's Claim. In particular, each allegation of the Organization is denied by the Carrier. The Organization states that "Carmen were on duty" and the Carrier after investigation states that "Carmen were not on duty" (emphasis in original). The Organization states that "the work in question entailed more than a mere set and release test," while the Carrier states "only a set and release test was performed" (emphasis in original). There is no proof that anything other than a set and release test was performed. The Carrier's letter of August 7, 1989, is not rebutted and must stand as fact.

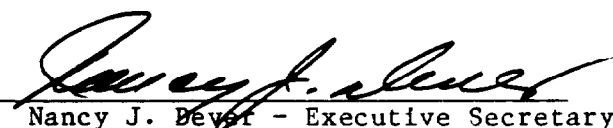
It is axiomatic that substantial probative evidence must be presented to substantiate any Claim. That burden rests on the shoulders of the Organization. The assertions do not constitute proof when clearly rebutted. The Organization has failed to sustain its case at bar with the requisite proof. From this record we cannot determine that the brake test complained of was historically work performed only by Carmen and/or protected by Agreement (Second Division Awards 11208, 10823, 10832, 11332, 11362, 11408, 11386).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.