Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12006
SECOND DIVISION Docket No. 11799-T
91-2-89-2-106

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the N&W Railway Company violated the controlling Agreement of November 19, 1986, Article VI, and Rule 35, when they are assigning the work of coupling (applying and removing) ground air to other than carmen at Bluefield Terminal yard on a continuing basis when carmen are assigned on a regular basis and available on a twenty-four (24) hour schedule, seven (7) days per week.

2. That because of such violation, the Norfolk and Western Railway Company be ordered to return the work of coupling (applying and removing) all ground air at Bluefield Terminal, Bluefield, 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 on the pendency of this dispute and did file a Response with the Division.

On July 16, 1984, Carrier issued a notice to its Yard Supervisors at Bluefield, West Virginia, concerning removal of ground air by train crews when they coupled locomotive consists onto their trains. The notice read in part:

> "In the future train crews will be allowed to remove the ground air from trains in your yard in order to expedite the movement of trains by tying the road power on and running the air back through the train from the unit."

On November 19, 1986, a National Agreement was reached dealing with the issue of strangers to the Carmen's Agreement performing items of work such as that dealt with in Carrier's July 16, 1984 notice. The third paragraph of Article VI of this Agreement provided in part:

> "Where air brake inspections and tests were removed from the jurisdiction of carmen at locations referred to in the preceding paragraph on or subsequent to October 30, 1985, such work shall be returned to carmen within 60 days of the effective date of this Agreement."

On March 2, 1988, Forty-four months after the July 16, 1984 notice was issued and Sixteen months after the November 19, 1986 Agreement was signed the instant Claim was filed contending, inter alia, that:

> "... management has not complied with the November 19, 1986 agreement by returning all air work back to the carmens craft within 60 days of the November 19, 1986 agreement. All air brake work, installing, removing, coupling, uncoupling and repairing and inspecting that was performed by the carmens craft prior to and on Oct. 30, 1985 is work that is secured for the carmens craft by the November 19, 1986 agreement."

In the handling given this matter on the property both parties extensively argued their contentions and submitted a plethora of statements contending, on behalf of Carmen, that Carmen performed this work for over forty years and, on behalf of Carrier that the work had not been exclusively that of Carmen but instead was performed by train crews when incidental to their assignments.

In reaching our decision, though, we need not address these several contentions and weigh the conflicting statements on existing past practices at Bluefield, because, on the surface, it is obvious that the initial Claim, dated March 21, 1988, misread the requirements of the November 19, 1986 Agreement. The third paragraph of Article VI, of that Agreement, required that work removed from the jurisdiction of Carmen on or subsequent to October 30, 1985 be returned within 60 days. Carrier's July 16, 1984, notice, instructing Yard Supervisors at Bluefield to allow train crews to cut ground air, removed this work from the jurisdiction of Carmen prior to October 30, 1985, not subsequent to that date.

Notwithstanding that this Claim is predicated on an obvious misreading of the November 19, 1986 Agreement, the Organization contends that it must be disposed of on the basis of Second Division Award 11563, involving a similar situation arising on this property at Williamson, West Virginia. Item 1 of the Statement of Claim in Award 11563 indicates that the Organization contended that Rule 103, Article V of the September 25, 1964 Agreement and Article VI of the December 4, 1975 Agreement were the contractual provisions relied on in support of its contentions. Contrast this with the Statement of Claim we are dealing with here, wherein Rule 35 and Article VI of the November 19, 1986 Agreement are alleged to have been violated.

Even if the situation at Williamson is the same as that at Bluefield, Award 11563 cannot stand for res judicata because it decided a Claim predicated on contract language different from that under which the Organization made its Claim here.

Accordingly, on this record we are unable to find that Article VI of the November 19, 1986 Agreement was violated when Carrier did not return to the jurisdiction of the Carmen's Craft work connected with removal of ground air it was allowing train crews to perform at Bluefield by notice dated July 16, 1984.

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 20th day of February 1991.