Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12036
Docket No. 11656-T
91-2-88-2-153

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carmen W. Rauskauskas, J. Scott, W. Pugliese and J. Ericksen were deprived of work and wages to which they were entitled when the Chicago and North Western Transportation Company violated Article V of the Agreement of September 25, 1964, as amended by Article VI of the December 4, 1975 Agreement, and Rules 15, 30, 58 and 76 of the controlling agreement, when it assigned other than carmen to make an improper terminal air test at Proviso Terminal on Road Trains PREMA, PPROX and PRGBA which departed May 30, June 2, 13, 21 and 30, 1987; when carmen were on duty and available to perform such work and also failed to permit those carmen to inspect or repair cuts of cars that were humped or time limits expired for need of terminal air test on pickups in Yard 9.

2. Accordingly, Carmen W. Rauskauskas, J. Scott, W. Pugliese and J. Ericksen are each entitled to be compensated in the amount of eight (8) hours pay at the time and one-half rate for each 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.

In many respects, this Claim involves the same issues and similar facts as the Claim in Second Division Award 12033 and in fact represents a continuation of that Claim. As in that case, Claimants are carmen employed at the Carrier's Proviso, Illinois, train yard. The Organization claims that the

Carrier violated Article V of the Agreement, and thereby deprived the Claimants of wages to which they were entitled, when the Carrier did not use Claimants to test and inspect air brakes on certain trains on the dates set forth in the Claim. Because the Organization suggests that trainmen may have been used to perform carmen's work, the United Transportation Union was notified by the Board of the pendency of this dispute but declined the opportunity to present a Submission.

Article V of the Agreement, as amended by Article VI of the December 4, 1975 Agreement, states in pertinent part:

"Article V
COUPLING, INSPECTION AND TESTING

(a) 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 carmen.

* * *

At locations referred to in Paragraphs (a), (c), (d) and (e) 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."

The Second Division has repeatedly interpreted this language to mean that any coupling and inspecting of air brakes, when performed, must be performed by carmen if the following three conditions are met:

1. Carmen in the employment of the Carrier are on duty.

2. The train tested, inspected or coupled is in a departure yard or terminal.

3. The train involved departs the departure yard or terminal.

See, e.g., Second Division Awards 11347, 11203 and 8448.

However, in this case the Carrier has contended that the air tests in question either were not required and were not done by anyone, or that whatever tests might have been done by trainmen were done on cars which were not then in a departure yard. Therefore, according to the Carrier, there was no violation of the Agreement regardless of whether air tests in fact involve work belonging exclusively to carmen.

Specifically, when the Claim was filed on the property, the Carrier's Division Manager replied that Train PPROX was a run-through train which merely picked up cars at Proviso and that therefore no air tests were required or performed at Proviso. The Division Manager further explained that Trains PREMA and PRGBA originated at the Carrier's Wolf Road or Yard 4 facilities and were inspected by carmen before their departures from those sites. Like PPROX, Trains PREMA and PRGBA picked up additional cars in Yard 9 but, according to the Carrier, additional terminal air tests were not required at that point and, in any event, the cars were no longer in their "departure yard" when they arrived at Yard 9.

Obviously, the Organization bears the burden of establishing that certain work, allegedly belonging to its members, was performed by others on the dates of the Claim. If no such work in fact was done, there can be no basis for the Claim. Having no proof that the disputed air tests were actually performed, the Organization relies on a series of assertions to give rise to a presumption. The Organization first contends that cars were added to the trains in question, and therefore the Carrier was required to perform air tests. Consequently, the Organization suggests that the Carrier must have used trainmen or others to do the tests.

However, the Carrier effectively rebutted the Organization's argument. The Carrier denied that the disputed tests were performed, denied that such tests were required, and denied that events transpired which would require tests as the Organization had contended. Consequently, the critical facts are in dispute and the record will not support a conclusion that the work at issue in the Claim was performed at all. The Board is not empowered to interpret Federal Railroad Administration regulations to conclude that air tests should have been performed, and to enter an award in favor of the Claimants on that basis. See, Second Division Award 11021. Finally, even if the Organization had shown that some air tests were performed by others at Proviso on the trains in question, it appears that Proviso did not represent a departure yard for those trains within the meaning of Article V of the Agreement. For all of these reasons, the Board need not reach the issue whether such work in fact is reserved exclusively to carmen. Rather, the Claim must be denied.

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 1st day of May 1991.