Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12041
SECOND DIVISION Docket No. 11691-T
91-2-88-2-186

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. Rakaukuas, E. Pugliese, J. Scott and J. Eriksen, were deprived of work and wages to which they were entitled when the Chicago and Norht 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 WKBBX and PPFCX on September 12, 25 and 30, 1987, which then departed the terminal on the above-mentioned dates, when Carmen were on duty and available to perform such work.

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

This Claim involves the same Claimants and issues similar to the Claims in Second Division Awards 12033 and 12036. Claimants again are Carmen employed at the Carrier's Proviso, Illinois train yard. The Organization claims that the Carrier deprived the Claimants of wages to which they were entiled 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 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 it 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."

As noted in Second Division Awards 12033 and 12036, the Second Division had repeatedly interpreted the quoted 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."

Once again, however, the Carrier argues that the testing of air brakes which the Organization claims on behalf of Claimants was not required to be done and in fact was not done by anyone on the Claim dates. The Carrier states that the trains mentioned in the Claim were run-through trains which merely picked up blocks of cars at Proviso. Furthermore, the Carrier maintains that Proviso was in any event not a "departure yard" for any of the trains in question. It follows, according to the Carrier, that there was no violation of the Agreement regardless of whether air tests in fact involve work belonging exclusively to Carmen.

The Organization relies in part on certain letters of instruction which it asserts were given to Carmen in Yard 9 at Proviso, indicating that cars arriving at that facility for final inspection were not to receive inspections under the applicable Federal Railroad Administration rule. The Organization argued in a letter to the Carrier dated June 25, 1988, in conjuntion with this Claim, that those instructions violated the FRA rule:

> "In the Proviso Yard the standard practice is that cars are inspected in Yard 9 and then humped and trains are made up at Wolf Road and Yard 4. They are inspected and repaired for outbound departure. The cars in Yard 9 on these outbound blocks receive no inspection, testing of air, or repairs. Cars arriving in Yard 9 are also not inspected for brakes and related brake repair. This allows for a hazardous safety violation, in addition to a violation of the Agreements and rules quoted earlier in this dispute, and loss of work and wages to the Claimants."

The Carrier responds that for all of the trains cited in the Claim, Proviso was a point enroute, each train having orginated elsewhere and being destined for a point beyond Proviso. According to the Carrier, neither the FRA rules nor the parties' Agreement required that air tests or inspections be performed on those trains, or on the blocks of cars which they picked up, at Proviso. The Carrier has asserted that the cars involved in those pickups were inspected by Carmen at Proviso after their arrival and before their departure in the trains in question.

It goes without saying that the Organization has 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 evidence that the disputed air tests were actually performed, the Organization argues that the Carrier must have had the tests done by persons other than Carman, or else it violated or evaded FRA rules which should have required such tests to be performed.

However, as noted, the Carrier has steadfastly denied that events transpired to require tests as the Organization contends. 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. Moreoever, the Board is not empowered to interpret Federal Railroad Administration regulations to conclude that air tests should have been performed in this case. The Board simply has no authority to enter an Award in favor of the Claimants on that basis. See, Second Division Award No. 11021. The Board may sustain this Claim only if the record establishes that coupling and inspecting was performed while the three conditions mentioned previously prevailed. No such showing has been made. Therefore, the Board need not reach the issue whether such work is reserved exclusively to Carmen. Rather, the Claim must be denied.

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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.