Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12111
SECOND DIVISION Docket No. 11886-T
91-2-89-2-195

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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. 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 14, 15, 30, 56, 58, 61 and 76 of the controlling Agreement, on September 19, 1988 when it permitted Brakeman Bell to perform Carmen's work of coupling air hoses on Train NPEMA. Carmen were on duty and available, but were not used.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carman J. Tunzer in the amount of four (4) hours pay at the straight time rate of pay, amounting to $56.36, account of the Carrier's violation of the controlling agreement on September 19, 1988, at Council Bluffs, Iowa.

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 and did not file a Submission with the Division.

The Organization contends that Carrier violated Article V of the September 25, 1964 Agreement as amended by Article VI of the December 4, 1975 Agreement among other Rules of the scheduled Agreement, when a brakeman coupled air hoses on Road Train NPEMA on September 19, 1988. It charges that this work was performed while Carmen were on duty in the train yard and observes that Claimant was readily available for duty but was not called. Its Claim was based upon the following statement from a Carman on duty:

"On September 19, 1988, NPEMA was called and on duty before the 07 Job had the train made up. As soon as the 07 Job made their last double to #19 track, I began to Blue Flag the track, south end first. When I reached the north end of #19 track, the air hoses were already buckled. Before the second Blue Flag could be put up, the train crew was calling for me to give them an air test.

Brakeman Bell buckled the air hoses while he was checking the hand brakes of their train. NPEMA had 11 or 12 cars that night."

Furthermore, the Organization asserts that contrary to Carrier's position that the brakeman was not instructed to couple air hoses, the train crew member was still under the implicit supervision of Carrier.

Carrier contends that the Carman who prepared tha above statement did not state that he actually witnessed the brakeman couple the air hoses and points out that said Carman could easily have performed this work since he was already at the location. It also notes that when the eleven cars were doubled onto Track 19 by the yard engine, the air hoses were coupled. It observes that the trainmen's work reports for that time do not indicate the brakeman coupled air hoses and even assuming arguendo that he did perform this work, it was not at the direction of Carrier. It cited Third Division Award No. 13803 as support for its position that Carrier is not responsible for an employees' actions under such type circumstances.

It considering this case, there is no dispute that said work accrued to Carmen under the specified requirements of Article V of the September 25, 1964 Agreement, but there is a dispute as to whether the brakeman actually performed the work. There is a stand-off in positions between the on duty Carman's statement that a brakeman coupled air hoses and Carrier's response that when the eleven cars were doubled onto Track 19 the air hoses were already coupled. In view of this standoff and the lack of any substantive corroborative evidence that would support the Organization's position, the Board finds no plausible basis for sustaining the Claim. As the moving party, the Organization has the responsibility to develop fully the bona fides of its Claim.

## 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 14th day of August 1991.