Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12268
SECOND DIVISION Docket No. 11889-T
92-2-90-2-11

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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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the September 1, 1974 Agreement, as amended, specifically Rules 36(a) and 98(a), Article VI of the Mediation Agreement dated December 4, 1975, and Article VI of the Mediation Agreement dated November 19, 1986, by instructing, allowing and permitting other than carmen, specifically the train crew, to perform a final air test on train No. 1-169-16 after the power had been reduced and also the consist of the train had been changed when qualified carmen were on duty and available to perform the final air test.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway be ordered to additionally compensate Carmen E. A. Lewy, D. J. Rowland and J. R. Russell each in the amount of four (4) hours at the pro rata hourly rate of pay for violation on November 19, 1988.

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.

In a recent Award of this Board involving the same parties and the same issue, the Board found for the Organization. Our rationale for that decision is set forth as follows:

"In considering this case, the Board concurs with the Organization's position. Under the defining parameters of the arbitral cases cited by the parties and particularly under the clear language of Article V of the September 25, 1964 Agreement Carmen have the right to perform inspections and tests of air brakes and appurtenances on trains in a departure yard or terminal and, as such, the work performed by the train crew on Train 1-991-07 on December 7, 1988 violated the above Agreement. Since the facts in this dispute, namely that Carmen were on duty in a departure yard and the train tested departed from this location, comport four-squarely with the three conditions set forth in numerous Second Division Awards including Awards 11347, 11203 and 8848, the Board must find for the Organization." (See Second Division Award 12113.)

In the case herein, and notwithstanding a detailed painstaking analysis of the record, we find no distinguishable variances in the facts and arguments cited to warrant an opposite or modified conclusion and accordingly, Second Division Award 12113 is controlling. Similarly, consistent with our decision in Second Division Award 12113, we will award Claimants one (1) hour each at their applicable rate of pay. Anything beyond this amount would indeed be excessive and unsupported by the record.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1992.

CARRIER MEMBERS' DISSENT
TO
AWARD 12268, DOCKET 11889-T
(Referee Roukis)

Bakersfield was an INTERMEDIATE POINT where the locomotive power of Train 1-169-16 was reduced and three cars were set out. The claim here concerned an asserted "final air test." The Majority, here, as it did in Award 12113, has ignored the fact that Bakersfield did not come under the provisions of Article V of the September 25, 1964 National Agreement.

For all the reasons detailed in the Carriers' Dissent to Award 12113, this decision is palpably erroneous.

We Dissent.

P. V. VARGA

M. W. FINGERHUT

R. L. HICKS

M. C. LESNIK

J. E. YOST