Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12314
SECOND DIVISION Docket No. 12340-T
92-2-91-2-141

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

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

STATEMENT OF CLAIM:

1. That the Southern Railroad Company violated Rules 42, 148 and Article VI of the November 19, 1986 National Agreement when work belonging to the Carmen's Craft was improperly assigned to employes other than Carmen at Linwood, North Carolina, on Sunday, May 6, 1990.

2. That accordingly, the Southern Railroad Company be ordered to compensate Carman J. A. Nesbitt five (5) hours pay at the regular Carman's rate in effect on the day the violation took place.

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 American Railway and Airway Supervisors Association was advised of the pendency of this dispute and did not file a Submission with the Division.

On May 21, 1990, the Local Chairman, Spencer, North Carolina, filed a Claim with the Master Mechanic at the Carrier's facilities in Linwood, North Carolina on grounds that the Carrier was in violation of the Agreement when it used a Car Foreman on Sunday, May 6, 1990, to perform an "apply and release" brake test on Train 222 on Track 2 at the receiving yard at Linwood. After the Claim was denied and appealed up to and including the Carrier's highest designated officer it was docketed before the Board for final adjudication.

According to arguments presented by the Organization, as moving party, the following represent the facts of the Claim:

> "The Southern Railway Company operates a facility at Linwood, North Carolina, in which they have yards from which trains depart to various destinations. Carmen are employed at this facility twenty-four (24) hours per day, seven days per week. The two (2) Carmen involved in these two claims are two of these Carmen. Carman Nesbitt is employed from 11 P.M. till 7 A.M., Monday through Friday, with rest days, Saturday and Sunday...."

When the Carrier used a Foreman to do the brake test on the 46 cars on train 222 on the Sunday in question, according to the Organization, in lieu of calling a Carman, it violated the Agreement.

The argument presented by the Carrier is that when Train 222 arrived at Spencer Yard and yarded on Track 1 the train crew removed units to pick a "solid block of cars from train 224." All cars remained charged with air and needed no initial, terminal air brake test. When the engineer uncoupled from the inbound train, and after a recoupling was made, discovered that he had lost the signal from the End of Train Device (EDOT) it was necessary to reset it. Once the EDOT was reset the engineer "of his own volition made a set and release." The only work which the Foreman did, according to the Carrier, was to "tell the engineer his brakes were released and the EDOT was blinking." According to the Carrier, the setting and releasing function, utilizing the Head and End of Train Devices, is not work exclusively reserved to Carmen on system-wide basis. The Carrier did admit that necessary air brake tests and air hose couplings were done, but that was not done by the Foreman but by the train crew. According to the Carrier, such work was "incidental to handling movement of cars of their own trains." The Carrier also argues that the relief requested is excessive. Likewise, it argues that various Awards cited by the Organization as precedent to support its Claim deal with "initial terminal brake tests" and are not, therefore, on point.

The Board notes that it is true that train crews performed air brake tests and coupled air hoses when the trains were being put together but this work is not being grieved here. Nowhere in the record of the instant case does the Organization bridge this subject. What is being grieved is the right of Carmen only to perform the specific function dealing with the apply and release test. The Carrier states that all the Foreman did was tell the engineer that his brakes were released and the EDOT was blinking. As moving party to the instant case, the Organization does not rebut this rendition of the facts by the Carrier. The question here then is whether the Carrier was obliged to call the Claimant, then on his rest day, to perform this task. As a matter of Agreement Interpretation, which function this Board is charged to perform, the contractual issue is whether the work as described by the Carrier is reserved exclusively to Carmen under the Rules of the Agreement. The Rules at bar state in pertinent part:

Rule 148

COUPLING, INSPECTION AND TESTING

"RULE 148. 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 the carmen.

This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a "doubleover" and the first car standing in the track upon which the outbound train is made up."
(Emphasis added)

Article VI of the 1986 Agreement states.

Article VI

"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 test. At these locations this work shall not be transferred to other crafts.

Where air brake inspections and test 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. Where such work performed by carmen is transferred to another location, carmen shall be utilized to perform such work. Any new air brake inspection work shall be assigned according to principles identifying the traditional delineation between carmen's work and work belonging to operation employees.

Any rules or practices which prohibit or restrict the use of Car Inspectors from working on cars taken from trains for repairs are hereby eliminated. Carmen assigned to make air brake inspections and test, when not engaged in such work, may be assigned to perform any work which they are capable of performing and which does not infringe on the contractual rights of other employees.

If there has been a diminution of air brake inspection and testing work due to a transfer of the work to another location, the remaining air brake inspection and testing work cannot be assigned to other than carmen except as provided in the Letter of Understanding attached hereto. If causes other than a transfer of work to another location precipitate the diminution of carmen's air brake inspection and testing work, at the locations identified above, nothing in this Article shall require the employment of a carman if there is not sufficient work of the craft to justify employing a carman.* Any dispute as to whether or not there is sufficiency of work shall be determined according to the following procedures:

Upon adequate advance request the General Chairman of Carmen shall be allowed access to the location in question to enable him to determine whether or not to request a joint check.

When requested by the General Chairman the parties will undertake a joint check of the work done. During such check, there will be no change made in the scheduling of trains normally operated nor in the work normally assigned for the purpose of affecting the joint check.

If the dispute is not resolved by agreement, it shall be handled under the provisions of Section 3, Second, of the Railway Labor Act, as amended, and pending disposition of the dispute, the railroad may proceed with or continue its determination. If the Board determines that the joint check has not been taken in accordance with the procedures described herein, the Board shall order another joint check and have the authority to 1) restore abolished positions, 2) award back pay; and 3) take other appropriate remedial action.

> The railroad shall have the burden of showing that the operations either were not changed or that any change that was made was for operational reasons and not to effect the joint check."
>
> (Emphasis added)

Finally, the Organization cites Rule 42 which is cited here, in pertinent part.

Rule 42

ASSIGNMENT OF WORK-USE OF SUPERVISORS

> "Rule 42. (a) None but mechanics or student mechanics regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.
>
> (b) If any question arises as to the amount of craft work being performed by supervisory employees, a joint check shall be made at the request of the General Chairman of the organizations affected. Any disputes over the application of this rule shall be handled in accordance with the provisions of Rule 35-Claims and Grievances."

The Organization cites arbitral precedent to support its position in this case. A review of that precedent shows that Second Division Awards 8448, 8602 more recently 11790, all sustained claims but only when it was alleged that the work at bar, which consisted in coupling hoses, inspecting cars and making air brake tests, was done by train crews ostensively involving what the Carrier, in its arguments in the instant case, call initial terminal brake tests, inspections and so on. Although there is evidence that train crews in the instant case did couple hoses and so on that point is not grieved by the Organization. The conclusions of the precedent cited by the Organization, therefore, are not on point with the instant case. Likewise, the exact relationship between Second Division Award 11287 and the case now before the Board is obscure although in that case also the work was done by a train crew and not a Foreman. More pertinent to this case, we believe, is Award 120 of Public Law Board 3858 issued on this property in 1989, to which the Organization offered no dissent. That case dealt with an issue comparable to the one here and that Claim also originated at the Carrier's Linwood, North Carolina, yard. In that case the Board concluded:

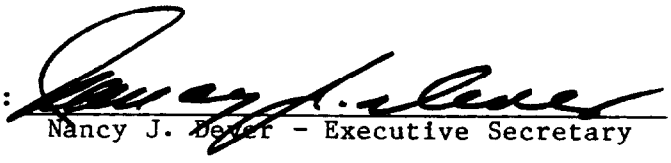
> "...Certainly, potential loss of Carmen work is rightfully a matter of concern. However, in this instance we find no rule that would require the Carrier to have a carman observe the release of brakes on the rear of a train. In its essence, what we find here at issue is a cut of cars that has already been pre-tested and mechanically inspected by Carmen. Under these circumstances there is no violation of the Rules."

Study of the Rules cited in the foregoing warrant concurrence with this conclusion by Award 120 which, because of the parellels between the parties, the issue, and even the location of origin of the Claim, can reasonably be considered under title of res judicata to the instant case. Although application of this principle was not argued by the parties in handling of this Claim on property, Awards issued by various PLBs and the NRAB are matters of public information to be used by this Board in the reasonable formulation of conclusions and framing of decisions on Claims brought before it. The Agreement was not violated.

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 29th day of April 1992.