NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1 SECOND DIVISION Award No. 12651
Docket No. 12353
94-2-91-2-156

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(CSX Transportation, Inc. (former Chesapeake
(& Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'carrier') violated rules 32 and 179½ of the Shop Crafts Agreement and Article VI of the November 19, 1986 National Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carmen H. Vallette, J. Gore, W. T. Hipes and D. Rakes (hereinafter 'claimants') when on October 22, 1987; October 25, 1987; October 30, 1987; November 13, 1987; November 15, 1987; and November 20, 1987, the carrier assigned employes other than Carmen to perform Carmen's work.

2. Accordingly, the claimants are entitled to be compensated as outlined below at the applicable Carmen's straight time rate for said violation of the aforementioned Agreement Rules.

October 22, 1987	Claimant Vallette	40 minutes
October 25, 1987	Claimant Hipes	2 hours
October 30, 1987	Claimant Vallette & Gore	45 minutes each
November 13, 1987	Claimant Vallette	15 minutes
November 15, 1987	Claimant Gore	15 minutes
November 20, 1987	Claimant Rakes	15 minutes
November 20, 1987	Claimant Vallette	30 minutes"

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 employe 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.

The Organization claims that Carrier violated the Agreement when, on October 22, 25 and 30, 1987, and November 13, 15 and 20, 1987, it permitted train crews to "work the air" on trains at Parsons Yard in Columbus, Ohio. According to the Organization, this was work which accrues to the carmen craft in accordance with the following provisions:

> "Rule 32-- (a) Effective November 1, 1964-- None but mechanics or apprentices regularly employed as such shall do mechanic's work as per the special rules of each craft except foreman at points where no mechanics are employed. However, craft work performed by foreman 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.
>
> If any question arises as to the amount of craft work being performed by supervisory employes, a joint check shall be made at the request of the General Chairmen of the organizations affected. Any disputes over the application of this rule shall be handled under the provision of the Rules 35 and 36.
>
> An incumbent supervisor who assumed his present position prior to October 15, 1962, at a point where no mechanic is employed, may be retained in his present position. However, his replacement shall be subject to the preceding paragraphs of this rule."
>
> "Rule 179 1/2--Effective November 1, 1964. 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"

"ARTICLE VI - COUPLING, INSPECTING AND TESTING

Article V of the September 25, 1964 Agreement, as amended by Article VI of the December 4, 1975 Agreement, is further Amended to add the following:

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 Carrier initially denied the claim on the basis that carmen were on duty at the time of the incidents at bar and thus, having lost no work opportunities, they are not entitled to any additional pay. In its last letter dated April 17, 1990, Carrier contended that no contractual violation occurred because carmen do not have exclusive rights to make brake tests.

The Board has ruled on numerous occasions that three criteria must be met to sustain a claim of this kind, namely: 1) the carman in the employ of the Carrier is on duty; 2) the train was tested, inspected and/or coupled in a train yard or terminal; and 3) the train involved departs a yard or terminal. Second Division Awards 10885, 10680, 10107, 6827, 5368. In addition, it has repeatedly been held that coupling of air hoses and testing brakes is not work that is held exclusively for carmen, but can be performed by trainmen if such work is "incidental to the handling or movement of cars in their own train and was not incidental to the mechanical inspection and testing of air brakes and appurtenances on that train by carmen." Second Division Award 5462. See also Second Division Awards 5485, 10885.

The most recent language of Article VI under the November 19, 1986 National Agreement does not alter these well-established precedents, but merely makes explicit that where the work of coupling, inspection and testing has been performed by carmen as a matter of past practice, the work cannot be transferred to other crafts.

The difficulty in this case is that there is no probative evidence to indicate precisely what work was performed, nor can this Board ascertain from the record evidence whether the work performed by the train crew was incidental to the handling and movement of cars on the train or was instead related to the mechanical inspection and repair of cars which is carmen's work. The Organization's assertion that the trainmen "worked the air" is insufficient for the Board to make a determination on these issues. The burden is on the Organization to prove its claim through probative and substantial evidence. Second Division Awards 10886, 6369, and 6603. On this record, we can only conclude that the Organization's evidentiary burden has not been satisfactorily met.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 19th day of January 1994.