

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Form 1

Award No. 12805
Docket No. 12673-T
94-2-93-2-72

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division
(Transportation Communications
(International Union
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(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"1. That, the Burlington Northern Railroad Company violated the terms of our Current Agreement, in particular Rules 27, and 30 and Article V of the September 25, 1964 Agreement, as amended by the December 04, 1975 Agreement and the November 19, 1986 Agreement, when they arbitrarily assigned other than Carmen to perform the coupling of air brake hoses on trains departing the Northtown Yards.

2. That accordingly, the Burlington Northern Railroad Company be ordered to compensate the following Burlington Northern Carmen in the number of hours listed for the appropriate dates listed:

| | | |
|---------------|-----------|---------------|
| E.G. Vierling | 2.7 Hours | June 16, 1992 |
| J.W. Dochniak | 2.7 Hours | June 16, 1992 |
| J.W. Dochniak | 2.7 Hours | June 18, 1992 |
| D. Gueltzow | 2.7 Hours | June 20, 1992 |
| D. Gueltzow | 2.7 Hours | June 21, 1992 |

All time at the punitive rate of pay."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 but chose not file a submission with this Board.

The original claim asserted a violation of Rule 30, based upon the allegation that, on certain dates in June 1992, transfer crews assigned to designated engines coupled cars in the Northtown Yard.

The General Manager replied that Rule 30 does not prevent switch crews from coupling hoses on intra-terminal movements between two yards within the Minneapolis-St. Paul Terminal.

The Organization then advised that the transfer yard has been used on a continuous daily basis as a Departure Yard for approximately 20 years, and asserts that time claims have been paid for similar and identical Rule 30 violations, i.e., the Carrier has paid time claims for trains that depart Northtown Complex, Terminal Yard.

Rule 30 states:

"In yards or terminals where Carmen are 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."

The Carrier responded by advising that Carmen have never had exclusive jurisdiction of coupling cars for movement to another part of the terminal, since the Carmen's duties are limited to departure tracks where road trains are made up; brakemen, switchmen, or carmen (as needed) couple cuts in classification yards for intra-yard movement within the yard limits. In this regard, the Carrier cited Second Division Award 5368 which established three conditions, i.e., (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 and (3) the train involved departs the departure yard or terminal. In fact, in the case at issue, the move was intra-terminal, which work has been performed for many years in all of the Carrier's yards by train crews, as well as Carmen, and Carmen employed by the Carrier were not on duty in the yard at the time the trainmen were assigned to couple the hoses and test the air brakes.

The Organization responded that its information indicated that the cars that were coupled by operating employees were added to a train that left the departure yard.

The Carrier has pointed out that the May 7, 1993 notification of intention to file ex parte submission refers to Rules 27 and 30, as well as Article V of the September 25, 1964 Agreement, etc., whereas the initial claim, which was handled on the property, was limited to an allegation of a Rule 30 violation.

But, regardless of the allegation that the claim has been altered when submitted here, the Board concludes that the Organization has not established the basis for a sustaining claim under Rule 30.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Ill. this 26th day of January, 1995.