Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12926
Docket No. 12859-T
95-2-93-2-233

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of
(Transportation Communications
(International Union
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That the Chesapeake and Ohio Railroad (sic) Company (CSX Transportation, Inc.) (hereinafter 'Carrier') violated Rule 32(a), 154(1), and 179-½ of the Shop Craft's Agreement, Article VI, of the 1986 Mediation Agreement between the Transportation Communications International Union -- Carman's Division and Chesapeake and Ohio Railway Company (CSX Transportation, Inc.) when on March 27, 30, 31, April 1, 2, 3, 4, 5, 6, 7, 8, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 27, 28, 29, May 1, 3, 7, 12, 13, 19, 20, 24, 27, 28, 29, 30, June 1, 2, 4, 7, 8, 9, and 10, 1993, the carrier assigned other than carmen work of performing air brake tests on trains that departed from the Carrier's Huntington Terminal where carmen are employed.

2. That accordingly, the carrier be ordered to pay Carman R. L. Eastham 16 hours, D. W. Martin, D. E. Gibson, and R. Thompson each 20 hours; G. Potter and C. R. Fisher each 24 hours; R. R. Bledsoe, R. L. Bohanon, J. H. James, G. V. Clark, and R. L. Blake each 32 hours; and L. R. Waters 40 hours at the applicable straight time rate in accordance with the Shopcraft's Agreement, Rule 7(c) for said violation."

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 were given due notice of hearing thereon.

As Third Party in Interest the Brotherhood of Locomotive Engineers and the United Transportation Union were advised of the pendency of this dispute, but chose not to file a Submission with the Board.

This case involves 99 claims that were filed by Carmen alleging that Carrier had violated Rules 32(a), 154(a), and 179½ of the Agreement when, between March 27 and June 10, 1993, it allowed train crews to make air brake tests inside yard limits at Huntington. Initially, Carrier alleges that this Board lacks jurisdiction to consider this case because multiple claims were combined improperly for submission to this body and the claim, as presented, is not the same as those handled on the property.

This Board notes that by letter dated October 12, 1993, Carrier suggested to the Organization that a lead case be designated and that the time limits on the remaining claims be held in abeyance pending resolution of that case. When the Organization conveyed its intent to combine the claims, Carrier noted on October 27, 1993, that there was no provision in the Agreement that permits the consolidation and docketing of claims.

In support of its action, the Organization cites Second Division Award 12551, involving the same parties in which the Board concluded that "... the Board encourages the parties to consolidate identical claims, for obvious workload reasons which do not need further detailing here. Such consolidation of identical claims is not a procedural defect, even when done ex parte."

While this Board agrees with Carrier that it would have been far better for the Organization to have advanced a lead or representative case to this body for simplified handling, we will not dismiss this case because of this alleged procedural defect. We note that the Board addressed the issue of combining identical claims. Under this set of circumstances, Carrier may assume that in considering one claim, it is handling all others. At the same time, the Organization is not free to argue factual differences. Claims that are not substantially identical are to be excluded.

The basic issue that arises in each of these claims is whether it was a violation of the parties' Agreement for train crews to perform an intermediate terminal air test at Huntington. It is Carrier's position that Rule 179½ expressly relieves the Carrier of the obligation to utilize Carmen for the performance of a set and release brake test. "Furthermore, when only an intermediate terminal brake test is required, the yard in which it is performed is not considered the departure yard for the train...." Relevant provisions include the following:

> "Rule 32(a)--(a) None but mechanics or apprentices 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.
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> Rule 154(a)--(a) Carmen's work shall consist of building, maintaining, dismantling (except all wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint, (not including use of sand blast machine or removing vats); all other work generally recognized as painter work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspector, safety appliance and train car repairers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work and all other work generally recognized as carmen work.

Rule 179½--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 the coupling of air hoses 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 "double over" and the first car standing in the track upon which the outbound train is made up.

Article VI-Coupling, Inspection and Testing of the November 19, 1986 National Agreement:

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 record contains no evidence that anyone other than appropriate personnel (Carmen or others where Carmen were not on duty at the point of origin) performed the initial terminal air brake test. There is also no evidence that any work other than the air brake test was performed by train crews on the dates in question.

This Board reviewed the Awards submitted by both parties on this issue and finds Second Division Awards 5462 and 11493 to be most dispositive. In the former, the Board found that the record was devoid of any evidence that Trainmen had performed the type of mechanical testing and inspection that is clearly reserved to Carmen. The Board went on to add that:

"The argument made by the Employes that trainmen necessarily were required to conduct a mechanical inspection or the Carrier would have been liable for violation of the ICC regulations is not persuasive that the inspection was, in fact, made. What is established is that a train crew coupled the air hoses and made the usual air test as an incidental part of the duty of handling cars in its own train. As this Board said in Second Division Award No. 457, (without a Referee):

> 'Coupling air hose and making the usual air tests, incidental to the duties of train service employes, is not a violation of the carmen's agreement. The coupling of air hose in connection with inspection and repairs to cars and air brake tests, incidental to inspection and repairs to cars, is carmen's work.'

In view of the foregoing, the Board finds no violation of the agreement rules cited and relied upon by the Employes."

In regard to Article V of the September 25, 1964 Agreement, as amended by Article VI of the December 4, 1975 Agreement, Award 11493 held:

"The countless interpretations which have been issued in connection with this nationally applicable agreement provision have clearly established that where air test work is performed in connection with the Carman's regular duties of mechanical inspection and repair, such work is reserved to Carmen. However, where, as here, the air test work is incidental to the pick up of cars by the road freight crew, such work is not reserved exclusively to Carmen. (Second Division Awards 10885, 10886). The fact that the location in this case is an intermediate point of the road crew's assignment is also an important consideration in the interpretation of Article V(a). In this regard, we agree with the opinion expressed in Award 10823 of this Division, and have applied its principles to the facts of this case."

The Board concurs in this reasoning and thus denies this claim.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.