

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12997
Docket No. 12899
96-2-94-2-46

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation-Communications International
(Union, AFL-CIO, CLC
PARTIES TO DISPUTE: (
(CP Rail System (Delaware & Hudson Division)

STATEMENT OF CLAIM:

- "1. That the Canadian Pacific Rail System (hereinafter 'Carrier') violated Rules 43 and 49 of the current Carmens' Agreement, effective September 9, 1990; and the service rights of Carman Howard Huto (hereinafter 'Claimant') when on January 6, 1993 the Carrier assigned Train and Engine Service employees to perform Carmens' Classification of Work.
2. Accordingly, that the Carrier be ordered to compensate the claimant 2.7 hours at the applicable Carmens' rate of pay for said violation of the aforementioned Agreement Rules."

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.

The Organization alleges that on January 6, 1993, the Carrier violated the Agreement by permitting other than Carmen to perform Carmen's duties on Train BH-1. The Organization asserts that although Carmen were on duty in the East Binghamton Yard, transportation employees were permitted to test, inspect and couple a train in a departure yard and that the train thereafter departed.

This Board has studied the on-property record with full knowledge that the Organization has asserted those conditions long held to establish that the work belongs to Carmen. The evidence that air hoses were coupled and air tests performed is clear from the record. However, the Carrier's defense must hold. The Carrier denied the claim under an interchange agreement.

This Board has evaluated the Carrier's denial of the claim. The Carrier asserted that the inspection was done by a foreign Carrier at the point of interchange. The Carrier stated without rebuttal that it was the foreign Carrier that had its train inspected before departure. While the Organization asserts that this work belongs to the Carmen, there is no probative evidence of record that would provide proof of Agreement violation. The facts demonstrate that East Binghamton Yard is an interchange point between the Carrier and the New York Susquehanna and Western Railway Company (NYSW). The record indicates that NYSW had its employees inspect their train prior to departure. The Carrier states without rebuttal that NYSW employees did air brake tests to determine defects prior to accepting the interchange.

The Board denies the claim as the train that departed the yard was not the Carrier's train, but that of the NYSW. As the Carrier did not control the train, it did not assign employees other than Carmen to do Carmen's work. The air brake testing performed was by the NYSW on its own train. Therefore the conditions to establish that this work belongs to Carmen under these instant circumstances have not been met.

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.

Form 1
Page 3

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of April 1996.