

2. Accordingly, the carrier be ordered to pay Carman G.M. Jones, ID #627720 (4), hours at the applicable straight time rate in accordance with the Shop Craft's Agreement, Rule 7(c) for said violation."

(The above Statement of Claim is from Docket No. 13152-T. It is representative of the Statement of Claim in Docket Nos. 13153-T, 13154-T, 13155-T, 13156-T, 13157-T, 13164-T, 13165-T and 13166-T which will not be repeated herein.)

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 these disputes 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 disputes involved herein.

Parties to said disputes were given due notice of hearing thereon.

As Third Party in Interest, the United Transportation Union (UTU) was advised of the pendency of these disputes, but it chose not to file Submissions with the Board.

The nine Dockets identified above have been consolidated because the work or tasks at issue (the coupling of air hoses), the work site and the governing Agreement (Rules) are the same. Three of the claims are for work performed by employees other than Carmen on March 18, 1995; one claim each for work performed on March 23, 24 and 25; and two claims for work performed on June 21 and June 22, 1995, respectively. The Claimant for two of the claims is the same; the other claims are from different individuals, all of whom are Carmen.

The Organization claims that the trains on which the Trainmen worked were on departure tracks, that Carmen were on duty and that the trains departed the Carrier's Richmond, Virginia, ACCA Yard. The Organization also contends that,

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13199
Docket No. 13152-T
98-2-96-2-55

Award No. 13200
Docket No. 13153-T
98-2-96-2-56

Award No. 13201
Docket No. 13154-T
98-2-96-2-57

Award No. 13202
Docket No. 13155-T
98-2-96-2-58

Award No. 13203
Docket No. 13156-T
98-2-96-2-59

Award No. 13204
Docket No. 13157-T
98-2-96-2-60

Award No. 13205
Docket No. 13164-T
98-2-96-2-67

Award No. 13206
Docket No. 13165-T
98-2-96-2-68

Award No. 13207
Docket No. 13166-T
98-2-96-2-69

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when these awards were 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:

"Claim of the Committee of the Union that:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as 'carrier') violated Rule 32(a), 154(a) and 179½ of the Shop Craft's Agreement, Article VI, of the 1986 Mediation Agreement and CSXT Labor Agreement No. 16-48-92 Memorandum of Agreement between Transportation Communication International Union—Carman's Division and Chesapeake and Ohio Railway Company (CSX Transportation, Inc.) when on March 18, 1995 the carrier assigned other than carmen to couple air hoses on train no. R41018, with 23 cars, that departed from Richmond Virginia, Departure Yard at 10:30 PM.

pursuant to various provisions of the Parties' Agreement Rules 32(a), 154(a) and 179½ of the Shop Crafts Agreement and Article VI of the 1986 Mediation Agreement, the work identified above belongs to its craft.

In its oral arguments before the Board, the Organization objected to what it characterizes as a "new theory" and new arguments contained in the Carrier's Submissions to the Board. It is well established that the Board may not consider matters not properly joined on the property and it will not do so in this instance.

Along these same lines, the parties exchanged correspondence and other material subsequent to the Organization's May 15, 1996 notice of intent to file ex parte Submissions on behalf of its members. This material may not be considered by the Board.

Last, before addressing the merits, the Board notes that the Organization submitted a past claim that was settled by the Carrier which it claims to be "identical" to those now before the Board. This settlement is also not properly before the Board and may not be considered because the parties agreed to the settlement "without precedent or prejudice."

Turning to the merits, a series of Awards has established the following criteria regarding the use of Carmen to couple air hoses:

1. Carmen in the employment of the Carrier are present and on duty;
2. The train tested, inspected and coupled is in a departure yard or terminal;
3. The train involved departs the departure yard or terminal.

The Board carefully reviewed the record developed on the property. What is at issue here are factual considerations which were not resolved on the property. There is no dispute that Carmen were on duty. However, the records are not clear on a number of key elements. For example, the exact location where the work was performed, who did the work (road crew or yard crew), whether mechanical inspections and testing were performed at the same time and whether the "trains" actually were trains or merely cuts of cars?

For all of the foregoing reasons, the Board must deny the claims.

AWARD

Claims denied.

ORDER

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 11th day of February 1998.