Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13854
Docket No. 13736
05-2-04-2-12

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"1. That the Union Pacific Railroad Company violated the controlling Agreement, particularly Rule 7(A), but not limited to, when Electrician Dave Bourland was refused compensation while inspecting a passing train in accord with Union Pacific Rule 6.29.1 on the date of September 26, 2002.

2. That, accordingly, the Union Pacific Railroad Company make whole Electrician Bourland by compensating him one hour pay for such service performed in accord with the Controlling Agreement between the Union Pacific Railroad and the International Brotherhood of Electrical Workers dated November 1, 1976, as amended."

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 a preliminary point, the Carrier's argument of improper handling has been considered and rejected. The Organization has presented a letter from the Carrier dated March 25, 2004 with the appropriate file number on the extension of time for the progression of this claim.

On merits, the burden of proof is on the Organization to demonstrate that the Carrier has violated the Agreement. The specifics of this claim allege that Claimant Electrician Bourland was refused compensation for inspecting a passing train. The Organization argues that the Claimant was performing a visual inspection under Rule 6.29.1, which requires that "Employees must inspect passing trains" and further, that pursuant to Rule 7(A) he is to be paid "for continuous service after regular working hours."

The Board has studied this novel dispute with care. On September 26, 2002, the Claimant had completed his work as an employee and left to return home. Before he left the property, he was blocked by a train for thirteen minutes and it is during that time, the Claimant argues that he was performing compensated work by inspecting the passing train.

The Organization on property argues that this is a continuing problem which the Carrier has failed to resolve. It maintains that the outcome of trains blocking employees, both coming and going to work has been detrimental to the employees and resulted in discipline for being late, subjecting employees to the Carrier's absentee policy and wage deduction. In its penultimate statement, the Organization asserts that:

> ". . . the Carrier docks the employees and takes discipline action against them for being late because of a train delay. One has to believe since they deduct employees wages and take disciplinary action when they are late because of Carrier's trains that the Carrier would compensate these same employees for being detained

by the Carrier's trains after bulletin hours and instructed by Carrier's own rules to inspect passing trains and continue their employment or suffer the consequence of insubordination and termination."

The Board has reviewed the Rules of the Agreement and the circumstances at bar. There is no showing by the Organization that the observation of trains *after work* has ever been considered as required by the Carrier. There is no evidence presented where any employee has been charged with insubordination, failure to inspect a train on his way home or disciplined in any manner, let alone terminated. The Organization has presented no proof that the interpretation of either Rule would lend support for the conclusion that an employee *off work* and returning home should be required or compensated as claimed.

The Board finds no evidence that Rule 6.29.1 required the employee after work to perform a roll-by inspection of trains, legitimately put him or herself into service for such activity, or be reimbursed under Rule 7(A) for "continuous service after regular working hours. . ." The Board concludes that there is no support for the violation of either Rule in the Agreement as the Claimant was not in continuous service, but off work. The requirement to perform inspections has not been shown to encompass the observation of a train at a crossing when delayed getting home after work. The claim must be denied.

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 3rd day of May 2005.