

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13856

Docket No. 13712

05-2-03-2-47

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Railway Carmen Division/TCU

PARTIES TO DISPUTE: (

(Canadian National Railway (Grand Trunk District)

STATEMENT OF CLAIM:

- "1. The Grand Trunk Western Railroad Company/CN violated the terms and conditions of the current Agreement, the Companies Circular No. 1977-BCY dated April 23, 1996 and their letter of April 19, 1996, when, on June 16, 2001 the Company assigned the West Tramp Yard Crew to bleed the air off fifty (50) freight cars in an inbound train located in Track Seven West in the train yard located at Battle Creek, Michigan.
2. That accordingly, the Grand Trunk Western Railroad Company/CN now be ordered to provide the following relief: that Carman E. Bell now be compensated for two and two thirds (2 2/3) hours pay at the rate of time and one half, the Overtime Rate of Pay for in effect on April 23, 1996 for this 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.

On June 16, 2001, the Battle Creek, Michigan Yardmaster ordered a yard crew (the West Tramp Yard Crew) to bleed the air off approximately 50 cars and move the cars out so that the track occupied by those cars could accommodate an inbound train. This claim followed with the assertion that Carmen and not Trainmen on the yard crew should have performed the bleeding of air function.

Typically, as the Carrier points out, bleeding of air is not exclusively Carmen's work. See PLB 2089, Award No. 46:

"It has been long held that the work of bleeding cars has never been construed as belonging exclusively to any particular class or craft. This is particularly so when the performance thereof is incidental to their regular work. See, among others, First Division Award No. 1196, 5984, 11735, 22803 and Second Division 2176."

See also, PLB 2141, Award No. 8:

"The present claim is based on the contention that carmen rather than the switching crew on duty should have been used to bleed 56 cars of air at Hartford Yard. The work in question was performed in connection with switching operations after the cars had been dropped off for yard switching purposes. Such work, in practice and under a long line of awards, does not belong exclusively to any craft or class of employees."

Further, as argued by the Carrier, examination of the Scope Rule shows that bleeding of air is not exclusively Carmen's work. The Scope Rule (Rule 105) covers "inspection in connection with air brake appurtenances on freight car trains ... in ... yards ... testing and inspecting of air brakes and appurtenances on all trains as required by the Carrier in the departure yard ... inspection and repairs on connection with pneumatic air brake triple valves or successor valves and air brake equipment .. including all other inspection and repair work in connection with air

brake systems on passenger and freight equipment” That rule does not specifically reserve bleeding of air from cars.

Based on the above, if all we had to consider in this case were the Scope Rule and the general award authority on the issue of bleeding air, this case would be quite easy and we would outright deny the claim. However, in this case, on this property, there is more.

By letter dated April 19, 1996, the Carrier’s Assistant Superintendent J. C. Robertson advised the Mechanical Department:

“Per our phone conversation, effective 2300 hours, April 28, 1996, the Mechanical Department will assume the responsibility of “bleeding” and inspecting inbound yard trains that are designated for switching at Battle Creek Yard.”

Consistent with that letter, on April 23, 1996, the Carrier issued Circular No. 197-BCY:

“Effective 2300 hours, April 28, 1996, the Battle Creek Mechanical Department will assume the responsibility of “bleeding” inbound yard trains at Battle Creek Yard.

Due to the large number of bad orders in outbound yard trains, all inbound yard trains will be locked, blue flagged and inspected by the Mechanical Department. During this inspection, the Mechanical Department will bleed the inbound train.”

In its November 9, 2001 letter, the Carrier states that the work performed by the yard crew was “... bleeding the air off fifty cars in an inbound train at Battle Creek, Michigan” [emphasis added].

Thus, although the Carrier has shown that throughout the industry bleeding of air on inbound trains is not exclusively reserved to Carmen and, indeed, the Carmen’s Scope Rule does not so reserve that work, nevertheless the Organization has shown that in April, 1996, the Carrier assigned that work to Carmen at Battle Creek (“the Battle Creek Mechanical Department will assume the responsibility of ‘bleeding’ inbound yard trains at Battle Creek Yard ... all inbound yard trains will

be ... inspected by the Mechanical Department and [d]uring this inspection, the Mechanical Department will bleed the inbound train" [emphasis added]. That assignment was therefore given to Carmen. There is nothing in this record to show that the Carrier ever took steps to undo that assignment. The bulletin in effect and other instructions given by the Carrier assigned the disputed work to Carmen. Under the limited circumstances of this case - and limited only to this case - the Organization has therefore sufficiently demonstrated that the Carrier improperly assigned the work away from covered employees on the date in dispute.

The Organization also makes reference to the parties' April 9, 2001 Moratorium:

ARTICLE IX - MORATORIUM

"This agreement is in full and final settlement of the Organization's Section 6 Notice dated September 8, 1997 and all other pending notices.

All rules, practices and agreements in effect between the Grand Trunk Western Railroad Incorporated and the Organization, unless specifically modified, changed or abrogated herein, will remain in effect until changed in accordance with the provisions of the Railway Labor Act, as amended.

Neither party may serve nor progress any new notices prior to September 1, 2004 and not to become effective prior to January 1, 2005."

Examination of the record as a whole shows that on the property the parties really did not explore an argument concerning the Moratorium in sufficient detail. As disclosed by the record, the Moratorium was referenced by the Local Chairman on the property and was not responded to by the Carrier. Given our decision in this matter, we need not also rely upon the Moratorium to decide this dispute. However, should this issue arise between the parties in the future, if raised again by the Organization on the property (with more specificity than in this case), it will be necessary for the Carrier to demonstrate why the Moratorium language does not also form a basis for sustaining a similar claim. We will leave the parties with the opportunity to more fully explore that issue in a better developed record.

The claim therefore has merit and it will be sustained. The Claimant lost a potential work opportunity which may have resulted in overtime. Under the circumstances, the remedy sought is a reasonable one.

The parties should not read more into this award than what this Board has narrowly decided. This award applies only to the Battle Creek Yard; only to inbound trains; and only to facts of this particular case.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 27th day of July 2005.