

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'
 { Department, A. F. of L. - C. I. O
 { (Carmen)
 { Chicago and Eastern Illinois Railroad Company

Dispute: Claim of Employees:

1. That the C&NI Railroad violated Rules 22 and 98 and Article V of Mediation Agreement Case A-9699 when they improperly subcontracted out the work of adjusting a load of paper products on February 19, 1976 and March 12, 1976.
2. That, accordingly, the C&NI Railroad, hereinafter referred to as the Carrier, be ordered to compensate Carmen C. Mullins and S. Hamney, hereinafter referred to as the Claimants, for fifteen hours each at the punitive rate for said violation of 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.

This dispute arose as a result of Carrier employing an outside contractor to adjust a load of paper products in Box Car R. I. No. 62612 on dates of February, 1976 and March 12, 1976. Carmen (Claimants) allege the work was improperly assigned to other than Carmen.

Carrier defends its action on the basis that such work is not included in the Carmen's Classification of Work Rule 98 and that no exclusive practice exists whereby Carmen at any point have exclusively performed such work.

The dispute did not arise under the terms of Article I & II of the September 25, 1964 Agreement. This Division of the National Railroad Adjustment Board has jurisdiction and shall resolve the dispute.

It has been long held by this Board that such language as contained in Rule 98 does not reserve to Carmen the work of adjusting or re-adjusting loads. See Second Division Awards 913 and 6321. To otherwise obtain the exclusive right to the work, a system wide practice must be in existence.

It has long been held that the party defending its position on practice alone bears the burden of supporting that claim with probative evidence. See Second Division Awards 7020, 5928, 5921, and 5525. The Employees here have not met that burden, and in fact, allege only a practice "at this point".

This dispute is distinguished from the dispute covered in Award No. 6059 where the work was generally recognized as Carmen's work and record was presented where claims were paid when other than Carmen performed the work.

For the foregoing reasons we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brosel - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1978.