

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 Employee:

1. That the Chicago & Eastern Illinois Railroad Company violated the Agreement, Rules 22 and 98, as well as Article V of Mediation Agreement Case A-9690 when they contracted work historically performed by the Carmen's craft to an outside contractor on March 11, 1976.
2. That the Chicago and Eastern Illinois Railroad, hereinafter referred to as the Carrier, be ordered to compensate Carmen J. Monk, hereinafter referred to as Claimant, for six (6) hours pay at the time and one half rate for this agreement 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 employe or employes involved in this dispute are respectively carrier and employe 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 flour in Box Car M.P. No. 113005 on date of March 11, 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, 1968 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 5585. 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 Brasch - Administrative Assistant

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