

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 8548
Docket No. 8365
2-TRRAofStL-EW-'80

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{
{
{ Terminal Railroad Association of St. Louis

RECEIVED

DEC 29 1980

P. E. LaCOSSE

Dispute: Claim of Employees:

1. That the Terminal Railroad Association of St. Louis violated Article II - Section 1 (a) of the March 19, 1949 National Agreement; Rule 7 - Item 3 of the April 1, 1945 controlling agreement when Carrier did not notify Electrician Gushman Walker until he reported for work August 16, 1978 of his change of shift and days off thereby depriving him of his forty hour (40') work week and contractual rights under the Agreement at St. Louis, Missouri.
2. That, accordingly, Carrier be ordered to compensate Electrician Gushman Walker four hours (4') at the straight time rate for August 16, 1978.

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.

The pivotal question in this dispute is whether Claimant was notified prior to the start of the third shift on August 16, 1978 at Madison Pit that he was assigned to protect the second shift electrician's position at Madison Engine Terminal, effective August 18, 1978. Claimant contends that he was notified of this assignment change only when he reported to the third shift position, which he occupied since August 9, 1978, while Carrier, contrawise, contends that he was notified on August 13, 1978. He asserts that Agreement Rule 7 Section 3 was violated by Carrier's untimely notification, since he was required to report for service, but not used and requests four (4) hours straight time compensation, consistent with this provision.

In reviewing this claim, we recognize the conflicting statements made by Claimant and Assistant Superintendent of Motive Power E. F. Tecu vix the exact time of notification, but we do not find that Claimant sufficiently proved that he was first notified on August 16, 1978. This is particularly evident, when we consider Mr. Tecu's letter to the Local Chairman, dated, September 15, 1978 wherein he

pointedly stated that he directly apprised Claimant on August 13, 1978 of the second shift electrician's assignment and his additional notation that he again reiterated this change, when Claimant visited him at the Brooklyn situs to determine whether he was off four days. Claimant did not address the August 13 notification date when he wrote his October 25, 1978 "To whom it may concern" letter or adduce persuasive correlative evidence that he was in fact, informed on August 16, 1978 of the assignment change. He merely averred that he was notified of the change when he reported to work the third shift position, which by itself, falls short of the required proof burden obligatory upon the initiating party. Carrier, in this instance, offered an affirmative defense, which Claimant did not adequately rebut and we are compelled by this finding to affirm Carrier's position. A standoff assertion is not evidence of probative value. We will deny the claim.

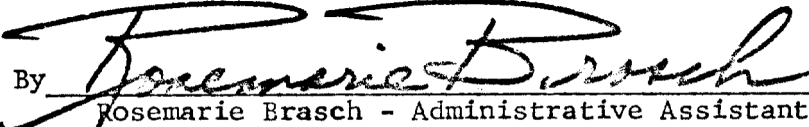
A W A R D

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 December, 1980.