

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Western Pacific Railroad Company violated the controlling Agreement and especially Rule 115 (a) and Rule 30 (a) of the September 25, 1964 Agreement, Article III when Car Foreman B. L. Coggins performed carmen's work.
2. That this claim was submitted on October 6, 1977.
3. That Carman J. Chrisman was available, capable, and willing to perform the work that Car Foreman Coggins performed in creating this claim. Therefore, the above mentioned carman should be compensated in the amount of four (4) hours at the straight time rate.

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.

On September 30, 1977 a damaged freight car was lifted off a flat car and placed on trucks by car forces from the Carrier's Oroville Yard. The crew which accomplished the operation consisted of a Car Foreman and two Carmen. Thereafter, the instant claim was filed. The Organization maintains that Rules 30 and 115 of the Agreement and Article III of the September 25, 1964 Agreement were violated because the foreman performed the carmen's work in hooking and unhooking cables, using tools to remove support cables and clamps, and driving the Krane Kar to move the trucks.

On the other hand, the Foreman and the Carrier emphatically deny that any such work was performed. They maintain that the work which was performed by the foreman was instructive and supervisory in nature and did not encompass the labor described in the complaint. In fact, they maintain that the two carmen on the crew actually performed the work for which claim was filed. The Organization relies on claimant's statement plus two letters from other carmen to buttress its claim that the foreman

performed such work. One of the letters was judgmental in character and contained no information regarding the work performed. The other letter was judgmental in character but did end with a "such as" statement regarding work the signator believed would be carman's work. The notes do not contain the specificity necessary to prove that any such work was actually accomplished.

From the foregoing and the entire record this Board determines that the Organization simply did not prove that the work outlined in the complaint was actually performed. There is, therefore, no basis for the remedy sought.

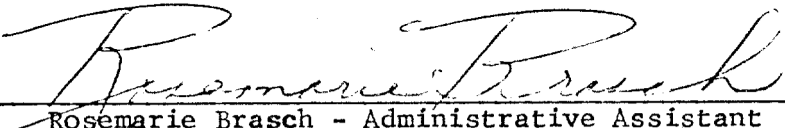
A W A R D

Claim dismissed for lack of justiciable issue.

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 28th day of January, 1981.