

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

- 1. That the Norfolk and Western Railway Company violated the Rules of the controlling Agreement; namely Rules 16, 24, 28, and associated Rules, and Article 1 (a), Memorandum of Agreement dated October 5, 1965, beginning December 1, 1977, at Bison Yard, Buffalo, New York.
- 2. That the Norfolk and Western Railway Company be ordered to compensate Carman E. Lang for eight (8) hours for each day he would have worked beginning December 1, 1977 through April 19, 1978, and Carman J. Grudniewski for eight (8) hours for each day he would have worked beginning December 1, 1977 through June 12, 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.

In the instant claim the Organization alleges Carrier failed to timely issue and apply revised car count figures for Bison Yard, a coordinated facility maintained by Carrier in conjunction with the Consolidated Rail Corporation, for the period ending September 30, 1977. The Organization asserts that percentage figures derived from the car count and applied to determine the number of Carmen positions allocated to ConRail and the Carrier were due to be issued on date of December 1, 1977. Instead, these figures were issued on date of April 26, 1978 and were not applied until May 25, 1978. As a result, the Organization claims, at least four (4) and possibly seven (7) additional Carmen positions should have been allocated to them in Bison Yard beginning December 1, 1977. Had the Carrier, asserts the Organization, not been delinquent in its contractual obligation to apply the figures in a timely manner, the appropriate number of Carmen positions would have been posted for bid and the two (2) Claimant Carmen would have been recalled from furlough on December 1, 1977 rather than on April 19, 1978 and June 12, 1978, respectively.

The Board notes the Organization has relied on Article 1(a) of the Memorandum of Agreement dated October 5, 1965 in progressing the instant claim. We note further that a number of claims, somewhat different in nature than the instant one, have recently been brought before us by the very same parties on this very same property. In the following Second Division Awards, Numbers 8286, 8287, 8288, and 8410, we took the position that disputes arising under the October 5, 1965 Memorandum Agreement are subject to adjudication under Section 13, the arbitration clause contained in the Washington Agreement of May 21, 1936. We reaffirm this position in the case at bar noting again that where the parties have contractually provided for disposition and resolution of claims in a forum which relieves them from the requirements of the Railway Labor Act by virtue of Section 5 (11) of the Interstate Commerce Act, we will recognize and respect such arrangement. Therefore, we dismiss the instant claim for lack of proper jurisdiction.

A W A R D

Claim dismissed.

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 11th day of February, 1981.