

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

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

Dispute: Claim of Employees:

- No. 1. That Carrier violated the provisions of the controlling Agreement, specifically, Rules 151, 138, and 29, when on the date of February 29, 1980, they allowed a Foreman to perform carmens' work in the repairing of car SP 615218, at New Castle Junction, Pa., and violated the contractual rights of Claimant, Carman, K. A. Taylor, who was in fact, available for call and not called.
- No. 2. That Carrier be ordered to compensate Claimant Taylor for all time account this violation, amounting to four (4) hours' pay at the time and one-half rate of pay.

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 employees 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 Organization contends that Carrier violated Rules 151, 138 and 29 of the controlling Agreement, when it permitted Foreman L. V. Castrucci to perform Carmen's work on the repairing of car SP615218 at New Castle Junction, Pennsylvania on February 29, 1980. Specifically, the claim is based upon Carman G. Pasquinelli's assertions that when he determined that the train line on this car was leaking up between center sill, he was informed through Foreman Castrucci that General Car Foreman Snyder wanted him to repair the car on the spot. Carman Pasquinelli then called Foreman Guiliano to apprise him of the situation and the correlative need to use another person and was told to perform the work, with the assistance of Foreman Castrucci, if it were deemed necessary. The Organization argues that notwithstanding Carman Pasquinelli's admonition to Foreman Guiliano that it would be a violation of the Agreement if Foreman Castrucci assisted him, Foreman Castrucci did help him repair the car and the instant claim was filed on behalf of the next available carman who could have performed this work.

Carrier contends that Foreman Castrucci did not assist Carman Pasquinelli that day and asserts that there is no Agreement rule which requires that a Carman must be given help on minor repair tasks. Foreman Castrucci denied that he aided Carman Pasquinelli and submitted a signed statement, dated July 21, 1980, attesting that he did not work on car SP615218 at New Castle Junction on February 29, 1980.

In our review of this case, we are constrained to dismiss the claim for want of substantial verifying evidence. While the rules cited by the Organization do preclude a foreman from performing Carman's work and the work in question was Carman's work, we find no corroborative or persuasive inferential evidence that would unmistakably show that Foreman Castrucci helped Carman Pasquinelli repair the train line on car SP615218. In the absence of compelling circumstantial evidence or eyewitness supportive statements, we have no credible way of judicially determining the claim's bona fides. Mere assertions per se are plainly not probative evidence. In Second Division Award No. 3201, which we find conceptually relevant to this dispute, we held in pertinent part that:

"The patent conflict in the evidence precluded a determination of facts that is essential to the proper resolution of this claim. It is well established that this Board has neither authority nor competence to resolve at this appeals level diametrically conflicting evidence presented during the handling on the property. Accordingly, we cannot on the record reach the substantive issue herein. We have no choice but to dismiss the claim on the ground that Petitioner has not established facts sufficient to require or permit a finding that Carrier violated the controlling Agreement."

The rationale of this decision is on point with our findings herein and we must dismiss the claim. The facts and proofs needed to establish the claim were not present.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of April, 1983.