

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Chicago and North Western Transportation Company

DISPUTE: CLAIM OF EMPLOYES:

1. The Chicago and North Western Transportation Company violated the controlling agreement when it unjustly deprived Carman George Senn of his contractual rights when it allowed other than Carmen to perform carmen's work at Fond du Lac, Wisconsin on April 1 through May 9, 1980, while Senn was laid off.
2. That the Chicago and North Western Transportation Company be ordered to compensate Carman George Senn in the amount of thirty-eight (38) hours pay at time and one-half rate in accordance with rules 17, 25, 28, 29, 53 and 124 of the controlling agreement. This is a continuing claim.

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 employes 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.

Claimant was furloughed from his carman's position at the Fond du Lac North Yard between April 1, 1980 and May 9, 1980. During the period Claimant was laid off, the Carrier occasionally assigned a mechanic-in-charge to perform car inspections as well as upgrading and cleaning cars on the repair track. Alleging that the work should have been assigned to a carman, Claimant seeks thirty-eight hours of pay at the overtime rate.

The Organization contends that a mechanic-in-charge may perform work exclusively reserved to the Carmen's craft only at points and in train yards where the work force does not exceed five men. Since the Carrier maintained a force of fourteen men at Fond du Lac at the time the mechanic-in-charge performed the work, a carman should have been assigned to perform the inspection and cleaning duties in accord with Rules 29, 53 and 124. The Carrier submits that a mechanic-in-charge may perform carmen's duties not only because the mechanic-in-charge at Fond du Lac was a member of the carmen's craft but also because both Rule 29 and the May 23, 1939 Federated Crafts Agreement specifically authorizes a mechanic-in-charge to do any and all mechanics' work.

The issue presented to us is whether or not the Carrier could assign a mechanic-in-charge to perform work exclusively reserved to carmen at the Fond du Lac North Yard which was a point where more than five men were assigned. This Board recently decided an identical issue between these same parties in Second Division Award No. 8146 (Dennis). In Award No. 8146, we unequivocally stated:

"Rule 29 cannot be interpreted to mean that mechanics in charge can be assigned carmen's duties in trainyards that employ more than five men. For this Board to decide otherwise would be to give meaning to Rule 29 that does not exist. That decision would be illogical. Rule 29 was bargained into the agreement to protect carmen's work, not to give the carrier the license to assign mechanics in charge to carmen's duties."


Thus, Claimant is entitled to thirty-eight hours of pay but at the straight time rate in effect during the period from April 1, 1980 to May 9, 1980.

A W A R D

Claim sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December, 1983