

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated Rules 29 and 117 of the controlling agreement and Article VI, Sections (c), (d), (e), (f) and (g) of the Agreement of September 25, 1964, as amended by the Agreement of December 4, 1975, when they blanked all the Carmen's jobs on Labor Day, September 6, 1982, and turned their work over to supervision to be performed at Beaumont, Texas.
2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate Carmen C. W. Phillips, S. Watts, J. A. Tucker and E. C. Colbert in the amount of eight hours (8') each at the punitive rate for September 6, 1982, (Labor Day) as they were available to perform this work if called.

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.

The Carrier and its employees were celebrating the Labor Day holiday on September 6, 1982. As a consequence of the holiday, the Carrier had "blanked" all the carmen jobs at Beaumont, Texas. Extra 8555 East arrived at Beaumont for the purpose of picking up 45 cars. It actually picked up 41 cars and the coupling of air hoses and inspection was done by the train crew. The Organization claimed 8 hours pay for four carmen who were normally on duty on this shift.

The Organization argues that the work belonged to it and that the Claimants should have been called in to perform the work. It specifically relies on Article VI of the Agreement of September 25, 1964 as amended by the Agreement of December 4, 1975. The Agreement reads in pertinent part:

(c) If as of July 1, 1974, a railroad had carmen assigned to a shift at a departure yard, coach yard or passenger terminal from which trains depart, who performed the work set forth in this rule, it may not discontinue the performance of such work by carmen on that shift and have employees other than carmen perform such work (and must restore the performance of such work by carmen if discontinued in the interim), unless there is not a sufficient amount of such work to justify employing a carman.

As a threshold issue the Carrier asserts that there is a factual dispute in the record which must lead to the dismissal of the claim. In the claim the Organization states that the work was done by the Carrier's supervisors. A verified statement was furnished to the Claimants whereby the supervisors alleged to have done the work deny this fact. From the statement it is evident that the train crew did the work. Several awards were furnished this Board as precedent for dismissal. Examination of those awards leads to the conclusion that a Board should dismiss the claim where there is sufficient factual dispute to prevent the Board from making other than a speculative opinion. No such dispute exists here. The claim would be the same, therefore we will not dismiss on these grounds.

Many awards were furnished by both parties to help us with this opinion. The Carrier furnished many awards that hold that several criteria must be met before a claim could be sustained. These are: 1. Carmen in the employ of Carrier is on duty. 2. The train was tested, inspected and/or coupled in a train yard or terminal. And 3. The train involved departs a yard terminal. These awards are based on VI(a) of the agreement which has a proviso that carmen be "on duty in the departure yard". The point is made that there were no carmen on duty in this instance.

The Organization furnished awards that held that the work did belong to the carmen if one is on duty, but also held that the action of the Carrier in not having one on duty, as here where the craft was observing the holiday, cannot be the basis for the missing element. Clearly there is no uniformity among the precedents.

We note that this established line of interpretation concerning VI(a) seems to have little to do with the amendment which concerns job stabilization. We agree with those opinions that hold that the absence of carmen for legitimate reasons does not meet all three of the criteria. In its Submission the Organization does not challenge the right of the Carrier to blank positions for holidays, therefore, the reason for the absence of carmen is undoubtedly legitimate. If, as has often been held, exclusivity is only relevant when the criteria are met, there is no contractual right to be called in when the work is performed. We concur with this line of reasoning.

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Award No. 10680
Docket No. 10338-T
2-SPT(EL)-CM '85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1985.