

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10685
Docket No. 9859-T
2-BN-CM- '85

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. (formerly St. Louis-San Francisco Railway Company) willfully and knowingly violated the provisions of the then and now current controlling agreement when it assigned other than Carmen to perform Carmen's work at the Consolidated Freight Car Shops, Springfield, Missouri on August 11, 19 and 26, 1980.
2. That accordingly, the Burlington Northern, Inc. be ordered to compensate Carmen as follows:

R. S. Slaughter - a four hour call for 8-11-80
J. A. Huckstep - a four hour call for 8-19-80
J. L. Parrish - a four hour call for 8-26-80
3. That this violation not be repeated.

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 were given due notice of hearing thereon.

The instant claim alleges that on August 11, 19 and 25, 1980, Carrier improperly assigned other than Carmen (specifically, a Laborer from the Firemen and Oilers craft) to perform Carmens' work at the Consolidated Freight Car Shops, Springfield, Missouri.

The record in this case contains numerous diverse and seemingly persuasive arguments which have been proffered by the parties in support of their respective positions. Said arguments range in character and nature from the very broad procedural contention that the Board lacks jurisdiction in the case because Organization allegedly failed to satisfy

the mandates of the Jurisdictional Dispute Rule (51), to the very focused substantive contention that, if the Board does accept jurisdiction in this matter, then the alleged violation was de minimus and further that the requested remedy is excessive thus warranting the dismissal of the claim itself.

Rather than undertaking a detailed recapitulation of the Board's rationale regarding each of the arguments presented by the parties and thereby protracting the ultimate disposition of this case, suffice it to say that the Board is persuaded that the claim must be denied for the following reasons:

First, Organization has failed to establish that there is a Rule which specifically reserves the exclusive performance of the disputed work to Carmen; and further that the disputed work was work which was reserved exclusively, either by practice or by mutual Agreement between the parties, to Carmen on a system-wide basis (Second Division Awards 7487, 8442, 8831 and 9062; Third Division Awards 7031, 12795 and 19841). Such a failure on Organization's part, as the moving party in such matters, is fatal to Organization's basic position.

Second, Organization has failed to adduce sufficient evidence of a probative nature which would establish that the disputed work was performed in the manner which Organization alleges. In this regard, Organization contends that on the three (3) cited occasions a Laborer from the Firemen & Oilers craft specifically furnished material to Carmen for the performance of their (Carmen's) assigned duties. Carrier, on the other hand, argues that there was no actual distribution of materials and that the disputed work, if any, consisted of "stockpiling of material on the Apron Track" for later use by the Carmen.

Other than Organization's mere assertions that the alleged incidents occurred in the manner as charged, there is no other supportive evidence available in the record to substantiate Organization's claim. Again, Organization as the moving party, has failed in its obligation to provide sufficient proof in support of its Claim, and such a failure is detrimental to Organization's basic position (Second Division Awards 7426 and 8073).

The third and final factor which forms the basis for this analysis is that the essence of Organization's argumentation herein has been that a Laborer from the Firemen and Oilers craft performed Carmen's duties which were normally and regularly performed by an employee who was classified as a Carman Supplyman or by a Lead Carman Supplyman. The claim which was filed in the instant identifies Claimants as Carmen and requests that, in remedy of the alleged infraction(s), said Claimants each be paid for four (4) hours at the Carman's rate. In this regard, the Board is persuaded that Claimants were not only not the aggrieved parties in this matter, but, in addition, the remedy which was requested was excessive under the circumstances since the rate of compensation for a Carman Supplyman and Lead Carman Supplyman is less than that of a Carman (Second Division Awards 7356 and 9689).

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For the foregoing reasons, either alone or in combination, it is determined that Organization's claim as presented herein is defective and cannot be sustained.

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 8th day of January 1986.