

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

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

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling Agreement, specifically Rule 138, when on the date of December 29, 1982, they allowed the General Car Foreman at Cowen, West Virginia, to perform Carmen's work of repacking car #912019 MWF, in lieu of Carmen who were available and qualified to perform such work.

2. That accordingly, Carman D. Greenleaf be compensated at the Carmen's straight time rate of pay, for eight (8) hours, on the date of December 29, 1982, account such violation.

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 record in this dispute shows that all the Carmen positions at Cowen, West Virginia were abolished on December 23, 1982 and the incumbents, including the Claimant were furloughed.

On December 29, 1982 Inspectors from the Federal Railroad Administration and Public Utilities Commission took exception to a torn lubricating pad and a bent box lid on Car MWF 912019.

For the car to continue in service and continue its movement in an on-going work train, a General Foreman employed and on duty at Cowen replaced the pad and the bent box lid, consuming, according to the Carrier, approximately thirty minutes in doing so.

The Organization presented and appealed the Claim, essentially on the contentions that the replacements performed by the General Foreman was work contractually belonging to Carmen, that it was a violation of Rule 138, Carmen's Classification of Work, that it was impossible to perform the work in question in the time alleged by the Carrier and that the Claimant was qualified and available for eight hours of work and stood to be called.

The Carrier's defense was that the Classification of Work Rule contemplates that the work in question would be performed by a Carman, assuming Carmen were part of the work force at Cowen; that no Carmen were employed at that location on the Claim date inasmuch as forces were temporarily furloughed due to the forthcoming holidays; that the General Foreman was used to avoid unwarranted delay to the train; that the work was minimal and the Claim should fail under the de minimus principle.

The amount of time actually engaged by the General Foreman in making the replacements is in sharp dispute for the Carrier asserted the tasks were accomplished in the time stated and to the contrary, the Organization asserted that to be impossible.

Viewing the record submitted by the parties as a whole, we find that there was a technical violation of the Agreement. We also hold, however, that in light of that record the Rule of de minimus must prevail. No payment is due.

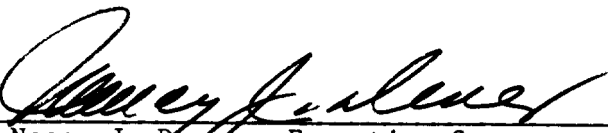
The burden of proof rests with the Petitioner, not with the Carrier, not only in the factual situation but for the ingredients of the Claim itself. For the Organization to overcome the Carrier's defense, it must present and demonstrate competent evidence of a probative nature. Otherwise, assertions no matter how vigorously or often made are not the equivalent of proof that is essential to the Organization's position. Briefly stated, the burden of proving a Claim rests on the party seeking its allowance.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.