

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company violated the provisions of the current Agreement, dated September 1, 1949, as amended, Rules 32(a) and 85, when the Carrier assigned other than Carmen to the work of checking for errors AAR billing repair cards, making corrections as needed, numbering, batching and filing of these bills, also handling joint inspections with the local authority.

2. That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company be ordered to make payment at the carman rate of pay, to the following named carmen of the St. Paul car department who were available to do this work on their rest days and/or on overtime from December 1, 1982, until such time as the Carrier siezes (sic) to violate the current Agreement, the claimants are: Eugene (Gene) Kampmann, A. Chilko, W. Heider, M. Burth and J. Franscone.

3. That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company be ordered to stop violating the current Agreement Rules 32(a) and 85 and restore this position and duties back to a member of the Carmen craft.

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.

As third party in interest, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Station and Express Employes was advised of the pendency of this case, but chose not to file a Submission with the Division.

The Organization's Claim appears to have been triggered by the Carrier furloughing a number of assigned Carmen effective December 1, 1982. Following a furlough, the Organization asserts the Carrier assigned carmen's duties to the clerical forces, thereby depriving the five Claimants herein of an opportunity to do the work. The Organization views the Carrier's actions as violating Rules 32(a) and 85 and particularly the following parts of the Rules:

"Rule 32(a) None but mechanics or Apprentices regularly assigned as such shall do regularly assigned mechanics work.
. . . .

Rule 85 Carmens work shall consist of
., and all other work generally recognized as carmens work."

The Organization claims the Carmen's craft has performed the disputed duties exclusively at St. Paul as well as other locations. The work in question involves the checking of repair bills, making corrections, numbering, batching, and filing thereof, as well as the handling of joint car inspections.

Our reading of the record fails to disclose any basis upon which this Board could hold that Rules 32(a) and 85 grant the disputed work to the Carmen. In the absence of specific Agreement language, the Organization has the burden of establishing by competent evidence that this work in question has by practice been performed by Carmen on a system-wide basis. This holding is based upon a prior identical claim involving the same parties. In Second Division Award 10784, the Board found the Carrier:

"Established that the work in dispute has been performed by clerks in the Milwaukee, Wisconsin, Car Shops, the Milwaukee, Wisconsin, Davies Repair Yard, the Ottuma, Iowa, Car Department, and by the car foreman at the Nahant, Iowa, Car Department."

As in Second Division Award 10784, the record in this case clearly shows the same evidence of non-exclusivity was established by the Carrier. Accordingly, the Organization has failed to support its burden of proof by probative evidence that the disputed work belongs to the Carmen on a system-wide basis.

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 16th day of September 1987.