

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11512
Docket No. 11370-T
88-2-87-2-2

The Second Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(Southern Pacific Transportation Company
(Western Lines)

STATEMENT OF CLAIM:

1. That the Carrier deprived Machinist R. A. Byrns, hereinafter referred to as claimant, of work that was contractually his by improperly assigning the outbound crew the task of uncoupling, coupling, adding, performing airtest, and power testing to locomotives in the Sparks, Nevada Diesel Facility on August 28 and 29, 1985, and September 2, 4, 8, 10, 12, 13 and 14, 1985. Thereby violating the provisions of Rule 33(a), 57 and Article V coupling, inspecting and testing of the September 25, 1964 Agreement.

2. That the Carrier be ordered to compensate Claimant a call of two (2) hours and forty (40) minutes at the Machinist overtime rate as per Rule 11 of the Motive Power and Car Department Agreement for each occurrence.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 of this case reflects that both the United Transportation Union and the Brotherhood of Locomotive Engineers were duly notified of the pendency of this dispute and afforded an opportunity to file a submission, but did not do so.

This claim involves eleven (11) incidents which occurred in August and September, 1985, in which a locomotive engineer and train crew performed the services necessary to either add or remove diesel units to their road power, turn diesel locomotives on a WYE track, or hostile diesel locomotives from a pit service track to a storage track.

The Claimant here involved was regularly assigned as a Machinist at Carrier's Sparks, Nevada locomotive servicing facility. His tour of duty was from 7:00 AM to 3:00 PM and he worked from Monday through Friday. Each of the situations which are the basis of this grievance occurred at a time of the day or on a day of the week when Claimant was not on duty.

The Organization argues that Carrier violated Rules 33(a), 57 and Memorandum "A" of the M.P.&C. Department Agreement when the operating crew members performed the service of adding to and/or cutting off diesel units, connecting the M.U. air hoses, performed the air tests and departure inspections as well as turning locomotives on the WYE track and hostling locomotives. It alleges that this work " - - -has been historically and consistently performed by the mechanical employees at the Sparks, Nevada yard limits and diesel facility."

On the merits, Carrier contends that the coupling and uncoupling of diesel units has not been exclusively reserved to any particular craft of employees; that the operating of locomotives is not, and never has been, the duty of Machinists and that at all times in question in this case there was no Machinist on duty.

We have carefully reviewed the record of this case; we have studied the Rules which have been cited; we have considered the respective arguments of the parties. It is clear from this record that the work here involved is not expressly stated in either the Assignment of Work Rule (33(a)) or in the Classification of Work Rule (57). What we have here is a contention of consistent performance by the Machinist craft but no proof of such consistent performance. Clearly, when a contention of consistent or exclusive performance is made, it must be supported by clear Rule support or by convincing, documented evidence of systemwide practice. That has not been done in this case. Therefore, the Claims must be and are denied. (Second Division Award 11475)

Inasmuch as we have addressed and disposed of this dispute on its merits, there is no need to fully address the procedural contentions raised by the Carrier in this case. We would, however, remind the parties that the provisions of the Rule 38 are clear and mandatory. The time limits and procedures for the handling of Claims and grievances cut both ways and can well stand alone as the cause for dismissal or sustaining of a Claim or grievance. (Second Division Award 11227.) Both parties would be well advised to take steps to insure themselves that claims communications are both timely made and delivery is accomplished.

A W A R D

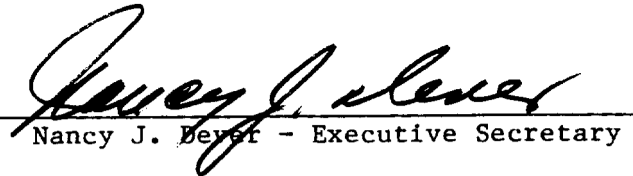
Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1988.