

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

(International Brotherhood of Firemen & Oilers
PARTIES TO DISPUTE: (
(Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, the Denver and Rio Grande Western Railroad Company arbitrarily assigned the Laborer's duties of caboose cleaning to another craft at Pueblo, Colorado.

2. That, accordingly, the Denver and Rio Grande Western Railroad Company be ordered to compensate Messrs. P. Styles (January 19, 1987) and J. Schmidt (January 26, 1987) for four hours pay each at the pro rata rate.

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 assigned caboose cleaning to employees of the Carmen craft at the Carrier's Pueblo, Colorado facility. The Organization argued that this work had been exclusively assigned to the Firemen & Oilers craft on a systemwide basis where employees of that craft are employed. In addition, the Scope Rule for the Firemen & Oilers provides for caboose cleaning and supply. The Organization also contended that since January 13, 1940 by Agreement between the then General Chairman and the then Assistant General Manager, this work was assigned to car yard laborers of the Firemen & Oilers craft. The Organization further argued that Pueblo is not an outlying point as called for in the 1964 Agreement, and attempts by the Carrier to use this exception are not correct. The Organization cites Award #4, Public Law Board 4136 on the property, and Second Division Awards 10099, 7583 and 3595 with respect to outlying points.

The Board notes that the Carmen were notified of the pendency of this dispute and by letter dated January 26, 1988 they declined to intervene in this dispute.

The Carrier contended that there were no car yard laborers on duty as a result of furloughs necessitated by a business downturn. The Scope Rule cited by the Organization only lists positions; it does not specify duties. Since no car yard laborers were available, the Carrier then had the right to transfer the work to the Carmen. In any event, the work is de minimis--a little over 2 hours in 8 days. The Carrier also stated that the Claimants would be improper in that if the work would belong to the craft, it would belong to those of the Firemen & Oilers that were on duty (mechanical laborers). The Carrier contended there is a distinction between car yard and other types of laborers. The Organization was specific on the property and, therefore, cannot override the decision. The Organization may be aggrieved, but these are improper Claimants.

Public Law Board 4136, Award #4, dated November 19, 1986 clearly sets out the responsibility of the parties when faced with the duties of cleaning and supplying cabooses. The Letter of Agreement dated January 13, 1940 between the Carrier and the Organization, which has become part of Supplement M of the controlling Agreement, places this work under the exclusive jurisdiction of the Firemen & Oilers. The Organization is not contending that the furloughs were improper. There is no contention that enough work is available to support a full-time car yard laborer, and under the circumstances the Carrier would have been justified in transferring this work to others of the Firemen & Oilers craft who were at work on the property. The Carrier chose instead to give this work to the Carmen, and since it made that decision it must be bound by that decision. This is not a de minimis situation as claimed by the Carrier, and the Board finds the Claimants are proper in that the Carrier had the option of recalling the Claimants on a 4 hour call-out or giving the work to those employed in the craft. Therefore, the Board will order the claim sustained. However, the Board notes that one of the Claimants, P. Styles, may not have been fit for duty on the date stated in the claim pending the outcome of a case to be heard on this Division. If that award finds the Claimant fit for duty, then his claim will be sustained. If that award does not find him fit for duty, then his claim will not be sustained. The claim of J. Schmidt will be sustained.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1988.