

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12201  
Docket No. 11866-I  
91-2-89-2-193

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (G. W. Franklin  
(  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

Claim of Carman G. W. Franklin that the carrier violated the current agreements and/or the principle thereof, when on/or about the month of July 1988, Car Foreman G. E. Nelson, in a very hostile, belligerent and disrespectful manner, by pointing and shaking his finger into the face of Carman Franklin, screaming that he disobeyed a direct order in Norfolk, VA - 38th Street Shop. Request an apology, verbally or in writing, from Car Foreman G. E. Nelson for falsely accusing him of disobeying a direct order after Nelson himself had instructed Franklin, "if black paint gets on the upper part, we will paint it all black." Norfolk, VA - Norfolk and Western Railway Company.

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 basic facts of this case are set as follows: By letter dated July 22, 1988, the Organization filed a Claim on behalf of the Claimant. The Claim related to the asserted bellicose behavior of a Car Foreman who ostensibly chastised Claimant, circa, late May, 1988. Specifically, the Organization contends that because Claimant painted the wall in the paint storage area perhaps contrary to prior instruction, the Car Foreman's subsequent vituperative response was tantamount to an impermissible altercation. The third paragraph of the Organization's July 22, 1988 letter depicts Claimant's perception of the Car Foreman's deportment.

"When Car Foreman G.E. Nelson observed the wall painted he immediately confronted Franklin. In discussing this Nelson became very hostile, belligerent, and disrespectful. The pointing and shaking his finger in Franklin's face and screaming that he had disobeyed a direct order was very embarrassing and demeaning to which Franklin has seen fit to take exception to. This ongoing immature behavior of Car Foreman G.E. Nelson most definitely constitutes an altercation which is not tolerated by the Carrier and will certainly not be by the Organization."

In response, the Carrier contends that the Organization failed to provide sufficient credible evidence to substantiate the incident (i.e., dates, times, witnesses, statements, etc.) and also observes that Claimant ignored reasonable instructions from the Car Foreman. On this latter point, it asserts that Claimant's actions constituted unacceptable insubordinate behavior. It further notes that the Organization has not cited any specific Agreement Rule violation. (See Second Division Award Nos. 7420, 6597 vis-a-vis a petitioner's obligation to cite a rule in support of a grievance.)


In considering this case, the Board concurs with Carrier's position. In the absence of a clear showing that a specific rule was violated, we lack any justifiable basis for finding for Claimant. Since the record is bereft of provable details and a correlative demonstration that a specific provision of the Controlling Agreement was violated, of necessity we must deny the Claim. There is plainly nothing in the record that establishes the relevancy and breach of any specific rule. This omission is a fatal defect.

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 18th day of December 1991.