

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12861
Docket No. 12562
95-2-92-2-84

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of Foreman D. A. Bayer, Truck Driver S. D. Wassel, and Lineman D. P. Wassel, submitted to the Consolidated Rail Corporation by the Organization by letter dated May 11, 1989, which reads as follows:

Dear Sir:

In the month of March, Mr. Knowles (Signal Foreman) with the Signal Gang mounted 1000 of steel pipe to the existing pipe in Flat Rock Tunnel. This pipe was installed to protect comm. and signal cable. On March 15, 16, and 21, the cables were pulled out of the old pipe and pulled through the new pipe. After cables were in new pipes the old pipe was dismantled and removed from tunnel. The work done by the Signal Dept. took over twenty days.

Across the Conrail System where there is signal and comm. cable it is a joint effort between the two depts. to get the job done.

Since there was no I.B.E.W. Communication workers on the job and the Signal Dept. performed communications work it created a violation between Conrail and the I B.E.W. Agreement.

Therefore this claim is submitted for communication line gang for ten days pay, total of eighty hours straight time rate. Sums are for the following:

868036	D. A. Bayer,	Foreman	\$1,268.00
868761	S. D. Wise	Truck Driver	\$1,128.40
854890	D. P. Wassel	Lineman	\$1,115.20"

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 employee 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 Brotherhood of Railroad Signalmen was joined as a Third Party in this dispute in accordance with Transportation-Communications Employees Union v. Union Pacific Railroad (385 U.S. 158, (1966)), and filed a Submission which was made a part of the record.

In March 1989, Carrier initiated a project to replace 1000 feet of steel pipe that protected communication and signal cable running through a tunnel in the Philadelphia area. The replacement project was given to the Signalmen and an IBEW Communications Maintainer was assigned to do line splicing as required. The IBEW Organization now claims that this work should have been shared with Communications employees. Carrier defends against the claim on both procedural and substantive grounds. On its procedural argument Carrier notes that no specific Rule provision has been cited as being violated in the initial claim, while the matter was being handled on the property, or in the Organization's submission to this Board. It asks that the claim be dismissed on that basis as procedurally defective.

With this the Board agrees. If the Organization fails to cite a specific provision of the Agreement as being violated the Board is unable to make a determination as to whether a violation in fact occurred. (See Third Division Award 27772 and Second Division Award 11013.) The Board has the responsibility to look at the specific language of the Agreement and apply the facts of the incident to that language. If the Petitioner fails to cite a specific provision then Board has no basis to make such determinations. We are not privileged to deal in surmise or speculation as to what the Agreement requires. It is Petitioner's responsibility to direct us to the language on which it is basing its claim. If this is not done, the claim is defective.

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Accordingly, the claim will be dismissed as procedurally defective because the Organization never, at any time, identified a specific Agreement provision as being violated.

AWARD

Claim dismissed.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.