

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13278
Docket No. 13231
98-2-96-2-141

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Chesapeake and Ohio Railway (sic) Company (CSX Transportation, Inc., (hereinafter referred to as ‘carrier’) violated the controlling Shop Crafts Agreement specifically Rule 11 and 31, when other than Carmen from Columbus, Ohio, Parsons Yard, were utilized to rerail and repair two locomotives and three cars at Washington Court House, Ohio, on September 17, 1995. When Carmen from Parsons Yard were available, willing, and qualified to perform this work.
2. Accordingly, the Carrier be instructed to pay carmen Paul T. Barrett, ID #98736, Lowell R. Shirkey, Jr. ID #99418 (Hereinafter referred to as ‘claimant’s’) for seven (7) hours and twenty minutes pay each at the applicable over time (sic) rate for said violation.”

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 were given due notice of hearing thereon.

A derailment occurred at Washington Court House, Ohio. The Carrier sent Carmen from Cincinnati, Ohio, to assist in the rerailment project. The claim is on behalf of two Carmen stationed at Columbus, Ohio. The Organization argues violation of several Rules. The Carrier denies any violation. The Organization argues that there exists an historical practice of using Columbus Carmen to work at Washington Court House. The Carrier denies the existence of such a practice.

The Board finds that neither the Columbus nor the Cincinnati Carmen have seniority rights extending to Washington Court House. The only argument that could sustain the claim is overwhelming evidence to support the Organization's contention of an historical past practice. When the Carrier denied the existence of a past practice, the Organization was obligated to prove such a practice existed. This it has not done.

The Carrier, in this instance, violated no existing Rules; nor has the Organization established a past practice which would support the claim.

AWARD

Claim denied.

ORDER

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 18th day of May 1998.