

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13393
Docket No. 13313-T
99-2-97-2-85**

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

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Carrier violated Rule 138, on June 22, 1996, whenever Boilermaker Corbin was assigned to perform Carmen’s scheduled and unscheduled work on T-3.**
- 2. That the Carrier be ordered to pay Carman J.S. Knippenberg eight (8) hours pay which he would have received had he been contractually called.”**

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.

As Third Party in Interest, the International Brotherhood of Boilermakers and Blacksmiths was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

The claim arose when on June 22, 1996, the Carrier allegedly used a Boilermaker to perform Carmen's work, but the Organization never described what Carmen's work the Boilermaker actually performed.

The one glaring omission in this dispute is the identity of work the Boilermaker performed that was exclusively reserved to Carmen by Agreement.

The Organization speculated that simply because there was a vacancy normally filled by a Carman, when the Carrier could not find anyone off the overtime list to work the position and reassigned a Boilermaker to do the work, that it was Carmen's work. Assumptions are neither facts, nor evidence of a Rule violation.

This is particularly so in this case, because the Carrier stated, without rebuttal, that the past practice at the Cumberland Shops has been for Boilermakers to assist Carmen.

The burden of proof necessary to sustain this claim is simply not evident. It fails for lack of proof.

AWARD

Claim denied.

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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 12th day of April 1999.