

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13459
Docket No. 13323
99-2-98-2-7

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: (

(The Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 2.1 when they allowed a laborer to perform carman’s duties on Locomotive 307 at East Deerfield Car Shop in East Deerfield, MA on October 28, 1996.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Gary A. Burnett in the amount of two hours and forty minutes (2.7) at the overtime rate. This is the amount he would have been entitled had the carrier complied with our agreement.”

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.

On the claim date, the Carrier assigned a member of the Laborer's craft to scrape and paint the inside of a locomotive cab. There is no dispute as to the time the laborer spent doing the scraping and painting.

The Carrier does not deny that the work is that of Carmen, but defends its assignment by referencing a four hour Incidental Work Rule that is exclusive to the Springfield Terminal properties. At least the original denial and the first appellant denial referenced a four hour Incidental Work Rule. The Carrier, in its final denial, referenced the Incidental Work Rule but dropped the four hour reference as the Laborer's Incidental Work Rule does not specify hours.

Rule 2 reads as follows:

"Rule 2. Work Function

- 2.1 Laborers will perform any and all services associated with the general maintenance and servicing of diesel locomotives and locomotive servicing facilities.
- 2.2 Laborers will also perform any and all other services for which they are qualified associated with the preparation of locomotives for service and incidental to a clean, safe, and operational facility"

The Organization contends that part of their Classification of Work Rule, which reads:

- "2.1 Employees qualified under the provisions of this Agreement to perform the following will be classified as Carmen:

* * *

- (k) Paint cars, locomotives, and components including stenciling . . ."

was violated.

After a thorough review of the on-property correspondence of this dispute, this Board finds the Organization has established a prima facie case, particularly when the Carrier has not denied the Organization's position of exclusivity when it comes to the painting of cars, locomotives and components.

Rule 2 of the Laborer's craft is general in nature. The reference to "any and all services associated with the general maintenance" cannot be interpreted to include work written into other Shop Craft Organization's Agreements.

Section (k) of Rule 2.1 is specific. Rule 2 of the Laborer's Organization is general in nature. A specific rule dominates a general rule.

The Carrier has relied upon Award 75 of Public Law Board 4623, but that reliance is misplaced. The Claimant was a shop laborer contending others were doing his work. The Neutral in Award 75 cited the Machinist's Incidental Work Rule and found for the Carrier, ruling that the Organization failed to establish anyone else was doing more than four hours of such work or that such work was other than "incidental to a clean, safe and operational facility."

The claim will be sustained, but at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 28th day of September 1999.