

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14006
Docket No. 13884
09-2-NRAB-00002-080036**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood Railway Carmen Division – TCU
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 42.1, when they arbitrarily allowed or otherwise ordered Carman Jacob Rosko to service engines.**
- 2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Jacob Rosko in the amount identified by the enclosed Exhibit A. This is the amount he would have earned had the Carrier not violated the 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.

The Claimant was assigned as a Carman at Ayer Yard, Massachusetts. On August 29, 2007, the Organization filed a claim contending that the Carrier violated Rule 42.1 of the Agreement, requesting that the Claimant be paid the difference in rates of pay between the Carman craft and the Machinist craft during the months of July and August, because the Claimant was “ordered or otherwise allowed to perform work on Locomotives.” Attached to the claim was a list of dates and locomotive numbers. The Carrier denied the claim at the initial level stating that “I find no violation of the contract.”

Before addressing the merits of the claim, the Board must address a procedural issue raised by the Organization during the handling of the case on the property, as well as the Carrier’s counter argument to such contention. The Organization has taken the position that the initial denial was procedurally flawed in that the response did not give a sufficient reason for denial of the claim. The Carrier counters that not only did the response fulfill the contractual requirements of the Agreement, the initial claim as presented was vague and indefinite. The Board finds that neither the initial claim nor the initial response are textbook examples of effective claim handling. The Carrier is correct in some respects that the initial claim is lacking in detail relative to the actual work that formed the basis of the claim. The Organization raises valid concerns relative to the efficacy of the rationale for the denial. On balance, the Board cannot find sufficient reason to dispose of the claim on a procedural basis, especially in view of the fact that during the subsequent handling of the claim both parties fully set forth the basis for their respective positions.

Rule 42.1 of the Agreement, upon which the claim is based, reads as follows:

“When an employee is required to fill for one hour or more the place of another employee receiving a higher rate of pay, he shall receive the higher rate for the time so employed, but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed.”

The Organization’s position is that the work performed by the Claimant at Ayer Yard, which it characterizes as “daily inspections,” is Machinist work and that

because the Machinist rate is higher than the Carman rate, the Claimant should be paid at such higher rate as provided for in Rule 42.1.

During handling on the property, the Carrier raised several positions in support of its denial of the instant claim. Initially, the Carrier stated that Ayer Yard is an outlying point where no bid Machinist position existed either on the dates of claim or at any time, arguing that in such circumstances the disputed work was properly performed by a Carman. The Carrier also stated that the disputed work, i.e., daily inspections on engines, is work that has historically not been reserved to the Machinist craft on this property, but is work performed by many different crafts of employees. The Carrier listed several locations where Locomotive Engineers, Electricians and Machinists have performed this type of work. Of particular import, the Carrier pointed out that Carman have performed this work in Lowell, Lawrence and Nashua even when Machinists were employed at these locations and Carman have also performed this work at various other outlying locations. The Organization did not effectively refute the Carrier's characterization of the historical performance of the involved work on this property.

The Board has long upheld the cardinal principle of contract interpretation that the burden of proof in a claim rests on the party asserting a violation. In order to prevail in this case, the Organization had the burden of proving that the daily inspection of engines, in particular at Ayer Yard, was work that was exclusively reserved to the Machinist craft, to the exclusion of other crafts, especially the Carman craft. The Organization failed to prove that the Claimant performed work exclusively reserved to Machinists and, therefore, failed to carry its burden of proof. Under such circumstances, the Board has no recourse but to deny the claim.

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 8th day of May 2009.