Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14032
Docket No. 13908
10-2-NRAB-00002-090023

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Metro North Commuter Railroad

STATEMENT OF CLAIM:

"1. Metro-North Railroad violated the Controlling Agreement when they had a General Foreman perform Electrical Craft That on July 25, 2008, at North White Plains, NY, MTA work such as putting in an AC Compressor onto Car 8020, north end of shop, on Track 5 which is work reserved for the Electrical Craft exclusively and caused Claimant to suffer a loss of earnings opportunity.

2. That accordingly, the MTA-Metro-North Railroad compensate Claimant eight (8) hours pay at the time and one half hourly rate which he would have received had the Agreement not been violated."

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.

By claim dated August 13, 2008, the Organization asserted that during a period between 4:00 P.M. and 12:00 A.M. on July 25, 2008, when Claimant Marshall was available to perform overtime work, the Carrier assigned General Foreman T. Letterio and Car Foreman Amedeo to assist an Electrician in putting in an AC compressor in Car 8020. That work, it alleges, normally requires two men, and two Electricians had routinely been assigned to accomplish it in the past. According to the facts set forth in the claim, Letterio helped remove and place the AC compressor, rather than assigning the Claimant, while Amedeo assisted with the fork lift operation.

The Carrier's untimely initial denial of the claim dated October 8, 2008 asserted that it had never received the August 13 claim. In any event, it contended, according to Carrier records the sole Electrician working on the shift in question performed no work on Car 8020. Nor did the Carrier's records reflect that car even being in the shop at North White Plains on or around July 25, 2008. Lastly, the Carrier stated that Rules 5-F-1(a) and (b) "do not specify the amount of work to be performed by a single mechanic. It is the Company's discretion and sound judgment to establish how many employees on one craft are needed to perform said work. . . ." Rule-5-E-1(b) it asserted, does not apply because all overtime is scheduled and distributed by the Organization, and because none was used, no Rule violation occurred.

In addition to the provisions of the Scope Rule, the relevant terms of Rule 5-F-1(b) state, in part, that ". . . none but mechanics or apprentices regularly employed as such shall do mechanics' work of each craft." In this instance, the Carrier contends, because the Organization failed to submit any documentary evidence in support of its claim, there is no need for the Carrier to engage in an evidentiary fishing expedition on behalf of the Organization.

The record reflects that the claim was supported by a signed statement from Electrician D. Cooper dated January 5, 2009, which reads as follows:

> "On July 25, 2009, I was assigned to put in an AC Compressor into Car No. 8020 at the North end of the shop which is located at Track 5. Since I was assigned to perform said work alone without the normal assistance of another electrician and a fork lift operator, General Foreman Todd Letterio and Car Foreman J. J. Amedo assisted me in removing and placing the AC compressor. Car Foreman Amedeo assisted in the fork lift operation."

The Carrier's response to Electrician Cooper's representations, reduced to basics, is that it has no obligation to reply to "the Organization's lone evidentiary submission of a

self-serving statement with minimal, if any, probative value. . . ." Faced with Cooper's statement, it argues ". . . there was no need for the Carrier to establish an affirmative defense."

That formulation of the Carrier's responsibilities, in the judgment of the Board, is overly technical in the context of this dispute. A statement in quasi-affidavit form from an employee purporting to have been assisted in his work by Supervisors may be "self-serving," but most evidence can be so described. That pinched characterization cannot defeat the obligation of the Carrier under the circumstances to make a complete disclosure of whatever facts it had on hand and was relying upon in opposition to the claim. A naked, undocumented assertion that its records suggested Car 8020 was not in the shop on the day of the alleged violation falls short of the kind of full disclosure at the earliest possible step of the grievance procedure which the Supreme Court has concluded is essential "to sift[ing] out unmeritorious claims." Neither the records relied upon, nor more importantly, any statements from the two Carrier Officers implicated by Cooper's statement, appear to have been offered during claim handling or, at any rate, made part of the record before the Board.

The Board has no quarrel with the Carrier's summaries of what prior arbitral Awards have held regarding the Organization's obligations to meet its burden of proof. Applying those principles to the facts of the instant dispute, however, we find that contrary to the Carrier's assertion that it had no need to refute Cooper's allegations, it was reasonably required to engage the question with more vigor than displayed here, because there was at least a rebuttable presumption raised by Cooper that was never responded to with easily accessible objective evidence. Having been presented with documentary evidence indicating work was performed on Car 8020, if the Carrier had documentation to the contrary, it had an obligation to divulge such evidence on the property as requested by the Organization.

For the foregoing reasons, the Board will sustain the claim. The Carrier is directed to compensate Electrician Marshall eight hours' pay at the time and one-half rate for the violation established in this record.

AWARD

Claim sustained.

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 3rd day of November 2010.