

See II B-1433
200-114

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6883
Docket No. 6764
2-LT-USWA-'75

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (United Steelworkers of America
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(The Lake Terminal Railroad Company

Dispute: Claim of Employees:

- (1) That, under the controlling agreement other than car inspectors and car repairmen were used to inspect and repair interchange iron ladles, in violation of Rule - Definitions Page 1, 4, and Rule 14 Section 4(a) and Rule 14 Section 4(c).
- (2) That, accordingly, the carrier be ordered to compensate employees identified below, eight (8) hours pay at the car inspectors rate for each day beginning on January 14, 1974, up to and including February 11, 1974, as penalty for these violations, the monetary penalty to be divided equally among: R. Cicco #655, E. Woolford #621, E. Dukate #1401, A. Shlapak #1433 and B. Bonney #699.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 instant claim is premised on the contention that beginning on January 14, 1974 and continuing up to February 11, 1974 Carrier (The Lake Terminal Railroad Company) used supervisory personnel to perform interchange inspection and car repairman work on interchange iron ladles at the new Ladle House, which work is contractually reserved to employees represented by the Organization (United Steelworkers of America, AFL-CIO). The Organization cites Rule - Definition, page 1 and Rule 14 Sections 4(a) and 4(c) to support their claim. The Organization states the work complained of consisted of the visual inspection of journal boxes, hooking of journal bearings for running babbit or waste grabs, visual inspection

of air brakes, brake rigging, couplers, draft gear, center plates, draft sills, wheels, ladle frame, hand holds and sill steps, draft and retainers. Carrier maintains, however, that all its supervisors did was to examine the journals on the ladles in order to determine if they were properly oiled and packed since they had been running hot. Carrier says their supervisors are not precluded from doing this since there is no Rule in the contract prohibiting them from examining, testing or supervising work performed by car shop employees.

It is the opinion of this Board that Rule 14 Section 4(c) specifically reserves the work of maintaining and inspecting railroad cars and the inspection of interchange cars to Car Inspectors and Car Repairmen while Section 4(a) of Rule 14 reserves to Carmen and Apprentices work generally recognized as Carmen work. Thus it is apparent that Carrier must assign the work enumerated in Rule 14 to Car Inspectors and Repairmen and its failure to do so constitutes a violation of the contract.

However, in progressing its claim to this Board it is not enough for the Organization to allege that work was performed by supervisors in derogation of the contractual right of members of its craft to perform said work. Rather, since the burden of proof rests with the Organization, it is incumbent upon them, while the claim is being handled on the property to present probative evidence to the Carrier in support of its argument that the contract was violated. Both parties are precluded from proffering evidence for the first time when the claim is before this Board. If the evidence was not presented on the property then Section 3, First (i) of the Railway Labor Act prohibits it from being considered by this Board. Awards of all Divisions of the National Railroad Adjustment Board upholding this principle are legion. (See, for example, Third Division Awards 18006, 18137 and 19802).

The Organization has attached to its submission two statements (exhibits B and C) which it states prove that supervisors were performing an actual visual and physical inspection of ladles. However, Carrier insists that this is new evidence not presented by the Organization in the handling on the property. We must agree with Carrier's contention since a thorough review of the record fails to disclose that said evidence was presented to the Carrier while the claim was being progressed on the property. Without this evidence, the record that was developed on the property, merely reveals a series of assertions and denials relative to what work was performed by supervisors. Consequently, in order for this Board to determine what, in fact, occurred would require speculation and conjecture on our part. This we are unwilling to do. Since the Organization has failed to establish by probative evidence what Car Inspectors' work was performed by supervisory personnel we are constrained to dismiss the claim for failure of proof.

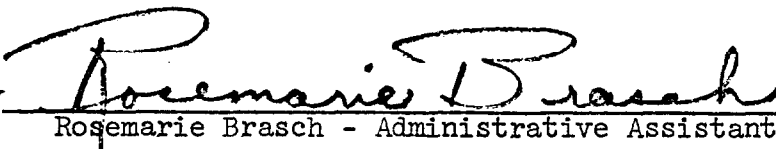
A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of June, 1975.