

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 7212  
Docket No. 6995-T  
2-SPT-CM-'77

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

Parties to Dispute: ( System Federation No. 114, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company, hereinafter referred to as the Carrier, on July 3, 1974 did knowingly violate assignment of work Rule 33 (a) as amended, and carmen's classification of work Rule 104, Current Controlling Agreement as subsequently amended, in using other than carmen to build a bulkhead on SP 320118 a drop end gondola freight car.
2. That freight carmen J. P. Lopez, B. L. Landingham and J. Abelar Jr. hereinafter referred to as the Claimants, be compensated in the amount of four (4) hours each at the overtime rate of pay for said Rules violation on July 3, 1974.

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 employees 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 waived right of appearance at hearing thereon.

The facts in this case are in dispute. The Organization contends that Maintenance of Way Employees constructed a bulkhead on a drop end gondola freight car, and that such work constituted work belonging to Carmen under Rule 33(a) and Carmen's Classification of Work Rule No. 104 by assigning other than Carmen to make repairs on the gondola freight car. Carrier contends that the involved work consisted merely of blocking and securing a load by means of wedging wooden planks across the end portion of loaded material for the purpose of securing the load they had placed in the car. The Organization denies that the car was loaded when the work was performed.

This Board is without authority to resolve factual disputes. The burden of proof is on the Organization, in this instance, to prove by probative evidence all allegations made in support of its claim. The Organization has failed in its burden of proof by probative evidence to show that the involved gondola freight car was not loaded and has also failed to prove by probative evidence that a bulkhead was constructed and attached to the end of the gondola freight car.

If, in fact, a bulkhead was constructed and attached to the gondola freight car, as alleged by the Organization, then this would be a valid claim under Rule 33(a) and Carmens' Classification of Work Rule 104. However, if, in fact, this work only consisted of blocking a load by wedging wooden planks across the end portion of loaded material for the purpose of securing the load, then this Organization would not have exclusive right to such work which was incidental to the securing of a load. Also, it appears from the Record that the contention of a non-existent load was not discussed on the property, and, therefore, can not be considered on this Appeal. The Organization can not prevail before this Board on the basis of allegations or issues that were not discussed during handling of the claim on the property. Therefore, it is the opinion of this Board, that the Organization has failed in its burden of proof, and this Claim will be denied.

A W A R D

Claim denied.

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 25th day of January, 1977.