

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { Railway Employees' Department, A. F. of L. -
 { C. I. O. (Carmen)
 {
 { Pacific Fruit Express Company

Dispute: Claim of Employees:

1. That the Carrier violated the Controlling Agreement, particularly Rules 23(a), 42(G) and (o) and Article II Paragraph (b) of the April 2, 1973 Memorandum Agreement when it assigned a Car Service Employee instead of a Carman to perform Mechanical Refrigeration Repair, Inspecting and other Mechanics' work on Carriers cars in shipping areas around Stockton, Atwater, Patterson, Lodi, Merced, Tracy, Modesto, Crows Landing, etc, Calif.
2. That accordingly, the Carrier be ordered to compensate Carman Doyle V. Johnson at his Pro Rata rate for each and every working day composed of eight (8) hours each, beginning August 17, 1976 and for every working day thereafter on a continuing basis until this violation of the Agreement ceases. Also that he will be compensated for all overtime accruing to him account of this violation of 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 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 waived right of appearance at hearing thereon.

The Organization's Local Chairman filed a claim with the District Agent of Carrier's Car Service Department, protesting the assignment of certain repair and inspection work to a Car Service Employee, member of another craft, instead of to a Carman. The District Agent is not a designated official under the pertinent provisions of the collective bargaining agreement to handle claims, and he so advised the Local Chairman.

Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board require that disputes be processed in the manner and according to the steps prescribed in the Agreement between the parties, before they may be submitted to this Board for resolution. Given the fact that these requirements were not fulfilled, and the claim was improperly filed, we have no choice but to dismiss the claim without consideration of its merits.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of October, 1978.