

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Patapsco and Back Rivers Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement on the Patapsco and Back Rivers Railroad, Sparrows Point, Maryland, the Carrier arbitrarily and in direct contrast with the rules of the Agreement, allowed other than Carmen to perform carmens work on the date of April 17, 1978.
2. That accordingly, the Carrier be ordered to compensate Claimants, Murrill Long #680, and Donald Mentzer, #681, for eight (8) hours pay at the time and one-half rate, account of this violation.

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 dispute in this case concerns the employees' contention that between 10:15 a.m. - 10:30 a.m., and between 5:00 p.m. - 5:30 p.m. on April 17, 1978, Car Foreman Horney was observed stenciling cars on track B&O 6, Grays Station.

The record does substantiate that the car foreman was stenciling cars. The carrier contends however that the car foreman, "could have been instructing carmen in the proper placement and method of stenciling cars". The employees have contended that the foreman was working alone.

It is unfortunate that neither party supported its contention of this matter on the property. The carrier never advanced beyond its conditioned supposition of what activity the foreman might have been engaged in at the times of the asserted violations. The employees did assert on the property they had support for their position. In seeking a conference of this claim, the employees asserted that: "... we are prepared to submit signed statements ..." supporting their position that at the times involved Foreman Horney was working alone. However, the employees in their rebuttal assert that such statements were deemed

"inadmissible and unacceptable" by the carrier which contended that no evidence was submitted that the foreman was working alone. On this record, this Board cannot determine if this support for the employees' position was made a part of the handling on the property despite the strong inference that the statements were a part of the parties' discussion in conference. This, and other evidence and contentions that have been initially raised before this Board have been excluded in our review.

We conclude the agreement was violated but that claimants are only entitled, under the contract, to one hours' pay at the straight time rate.

A W A R D

The claims are partially sustained to the extent consistent with our findings.

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 23rd day of July, 1980.