

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation (Conrail) violated Rule 8-H-1 of the Current Agreement when on January 14, 1980, a propane gas tank was left unattended with an open valve and leaking gas into the Radio Maintainers deplorable work room.
2. That, accordingly, the Carrier be ordered to build a safe and modern building at a safe distance from storage room for the Radio Maintainers away from any type of gas tanks and cylinders.
3. That safety of the employees must be the first priority of the Carrier as Electrician Gary Jackson was subject to a very serious accident on account of the propane gas leak.

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 not in dispute. At the time this claim arose, Claimant, G. R. Jackson, was a radio maintainer assigned to Avon Yard, Avon, Indiana. At 9:20 p.m. on January 14, 1980, Claimant returned to the radio shop from an outside assignment. He noticed a foul odor emanating from an adjoining room. Claimant and Foreman T. Ollier inspected the room and found a propane tank venting. Foreman Ollier tightened the valve and removed the tank from the room.

As a result of this incident, Claimant filed a grievance on January 18, 1980, which alleged that the Carrier violated Rule 8-H-1(a) of the Agreement when a propane gas tank was "left unattended with an open valve and leaking gas into the Radio Maintainers work room". For a remedy, Claimant demanded an "immediate investigation" and the building of a new radio shop for radio maintainers at the Big 4 Yard.

In support of its claim, the Organization argues that Rule 8-H-1(a) requires the Carrier to correct safe conditions at the Avon Yard. It provides:

"The parties to this Agreement pledge to comply with all safety and health requirements in accordance with State and Federal Laws."

The Organization further contends that this grievance was not timely answered by the Carrier. The grievance was filed on January 18, 1980. It was answered, more than sixty (60) days later, on April 14, 1980. Rule 4-P-1(a) of the Agreement provides that if a claim or grievance is not answered within sixty days from the date it was filed, it "shall be allowed as presented". According to the Organization, the lateness of the answer alone requires that the claim be sustained.

The Carrier, on the other hand, asserts that the Board is without jurisdiction to decide this claim. It argues that this Board's jurisdiction is restricted to claims that arise "out of the interpretation or application of the Agreement concerning rates of pay, rules or working conditions" (Railway Labor Act, Section 3). According to Carrier, compliance with Federal or State safety laws does not concern "rates of pay, rules or working conditions". Furthermore, the Carrier points out that the Organization has not introduced any evidence to show which federal or state safety laws have, in fact, been violated.

An analysis of the evidence indicates that the Carrier's position must be sustained.

Numerous awards of this Board indicate that we are without jurisdiction to enforce legislatively created rights. In addition, Claimant has not shown that any federal or state safety laws were violated. Nor has Claimant shown that the Carrier failed to "pledge to comply" with such laws. Finally, Claimant has failed to indicate under what power we might award the requested remedies.

Since this Board does not have jurisdiction over this claim, the lateness of the Carrier's answer to the grievance is of no consequence. As Referee O'Brien noted (Award No. 19766):

"Before the time limits of Article V become applicable, the claim as presented must come within the term "claims or grievances" upon which Article V is premised."

Accordingly, the claim must be denied.

A W A R D

Claim denied.

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Award No. 9321
Docket No. 9233
2-CR-EW-'82

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 1st day of December, 1982.