

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Chicago and North Western Transportation Company

DISPUTE: CLAIM OF EMPLOYES:

1. The Chicago and North Western Transportation Company violated the controlling agreement when it unjustly deprived Carman Casey Rennert of his contractual rights when it allowed other than Carmen to perform carmen's work at Fond du Lac, Wisconsin on June 11 through June 18, 1980, while Rennert was laid off.
2. That the Chicago and North Western Transportation Company be ordered to compensate Carman Casey Rennert for six days at eight (8) hours per day, (forty-eight hours pay) at pro rata rate (time and one-half), in accordance with Rules 17, 25, 28, 29, 53, and 124. This is a continuing claim.

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 employes 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 record in this case presents us with the same issue which was resolved in Second Division Award No. 9742. See also Second Division Award No. 8146 (Dennis). However, there is a factual dispute in the record regarding exactly when the Carrier abolished the mechanic-in-charge position at the Fond du Lac North Yard. The Organization asserts that the mechanic-in-charge impermissibly performed carmen's duties from June 11, 1980. The Carrier alleges that Claimant is not entitled to any compensation because the mechanic-in-charge position was properly abolished on June 11, 1980.

While this Board recognizes that the Organization bears the burden of proving its claim, the record accumulated on the property reveals that the Carrier failed to rebut the Organization's clear allegation that the mechanic-in-charge position was eliminated on June 18, 1980. In addition, the notice of abolishment has not been incorporated into the record. Therefore, we conclude that the evidence supports the Organization's contention that the position was not abolished until June 18, 1980.

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Award No. 9744
Docket No. 9521
2-C&NW-CM-'83


For the reasons more fully set forth in Award No. 9742, Claimant is entitled to forty-eight hours of pay at the straight time rate in effective from June 11, 1980 to June 18, 1980.

A W A R D

Claim sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December, 1983