

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10765
Docket No. 10353-T
2-DM&IR-CM-'86

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employees:

1. That the DM&IR Railway Company violated Rules 29(a), 57, and 71 of our Current Agreement when they assigned laborers to perform inspection of Car No. DM&IR 52052 at Proctor Yard.
2. That, accordingly, The Duluth, Missabe and Iron Range Railway Company be ordered to compensate Carman A. O. Aarak in the amount of four (4) hours pay for his rate and class for November 1, 1982.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Claimant, a Carman, filed a claim with Carrier claiming pay for cleaning work done by a Carrier Laborer. The first claim stated:

"Carrier assigned 4 laborer (sic) to clean brake rigging on B.O. D.M. & I.R. Car #52052 Proctor Yard Track 2F 11-1-82 on the 7:00 AM to 3:30 PM shift.

Violation of Rules 29, 57 & 71."

The Carrier answered this claim on the grounds that the cleaning of cars, here the cleaning of pellets from around the wheels, had characteristically been done by Laborers and was not Carmen's work.

At the second step of the grievance process, the Organization changed the claim to encompass the inspection of the car. The letter from the Organization on November 17, 1982 contained this section:

"Said car had been bad ordered for inoperative brakes. We are of the opinion that the laborer made the repair when he removed the rock and other material from the brake rigging. The car was then okayed by the Foreman, and allowed the car back in service."

The Carrier again answered the claim on the basis of the contention that the Laborer had not done Carman's work in the cleaning process.

When the case progressed to this Board, it contained the claim as now stated. The Firemen and Oilers intervened on the limited basis that the job of cleaning pellets from around the wheels of cars has been Firemen and Oilers work.

In its Submission to this Board the Organization states:

"The Carrier during the on-property handling has taken the position that laborers have cleaned the decks on car in the past and that the carmen do not have exclusive rights to the work in question. But the Carrier is missing the whole point of the claim or attempting to ignore it. The claim is for inspecting Car No. DM&IR 52052 which was in a bad order status for inoperative air brakes. The only way this car could be properly released is by having it properly inspected and then corrective measures taken."

Assuming arguendo that the claim before us is proper, there is not any evidence in the record that substantiates the fact that the Laborers inspected the car. The letter of November 17, cited above, indicates that a Foreman released the car. The claim, as accepted arguendo, explicitly states that Laborers inspected the car.

Assuming without deciding that the claim before us is proper, we find that the burden of proof of substantiating this claim has not been met. It is the duty of the claiming party to carry the burden of proof and when it does not meet this burden the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter, Executive Secretary

Dated at Chicago, Illinois this 5th day of March 1986.