

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11041
Docket No. 10619-T
2-B&M-CM-'86

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (
(Boston and Maine Corporation

Dispute: Claim of Employees:

1. That the Boston and Maine Corp. (hereinafter referred to as the Carrier) violated the terms of Rules 26 and 109 of the current Agreement at its East Deerfield, Massachusetts Car Shop, beginning on September 3, 1982 and each day thereafter until this continuous violation is corrected by the Carrier.

2. That accordingly, the Carrier be ordered to additionally compensate furloughed Carman K. D. Smith of East Deerfield, MA., (hereinafter referred to as the Claimant) beginning on September 3, 1982 and through the week ending October 28, 1982, for forty (40) hours each week or a total number of 320 carmen's straight time hours on account of this continuous 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 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.

The dispute in this case centers around the same underlying set of facts found in Award No. 11038, i.e., the transfer of certain brake repair work from the Carrier's Billerica, Massachusetts Shop facility. In the aforementioned Award, the issue involved the transfer of the passenger brake work from Billerica to the Carrier's Boston Engine Terminal. This case involves the transfer of the freight brake repair work from Billerica to the Carrier's East Deerfield, Massachusetts Car Shop. The specific claim in this case arose as of September 3, 1982 on behalf of the Claimant for hours lost as a result of the Carrier's assignment of the disputed work to a Machinist,

rather than the Claimant. The only additional fact from the aforementioned Award concerning the passenger work is that in the record in this case the Carmen assert that the Machinist assigned to the work at East Deerfield was not transferred from the Billerica Shop to the East Deerfield Shop, and indeed never worked at the Billerica Shop, but has been employed since he entered service with the Carrier at the East Deerfield Engine Terminal.

As in Award No. 11038 the Machinists have filed a Third Party Submission basically supporting the Carrier's position.

For the reasons discussed in the aforementioned Award governing the passenger brake work, the Organization's Claim for this particular freight brake work must be denied. The freight brake work moved from Billerica to East Deerfield was not "new" work but was a "transfer of work" within the meaning of Section 2 of the 1964 Shop Crafts Agreement; Rules 26 and 109 of the Agreement between the Carmen and the Carrier therefore do not apply; Award No. 2, Public Law Board No. 2728 is not dispositive since that case did not involve the transfer of work from one facility to another where the transfer was governed by the 1964 Shop Crafts Agreement; and there is insufficient evidence in the record for us to conclude that the terms of the 1958 Miami Agreement were binding upon the Carrier concerning the facts giving rise to this case.

The asserted fact that the Machinist awarded the work never actually worked at Billerica does not, in our opinion, change the result in this case. In the Third Party Submission filed by the Machinists, it is asserted that during the many meetings with the Carrier under the provision of the September 25, 1964 Shop Crafts Agreement, it was mutually agreed that Machinist Howe would be assigned to the transferred work until furloughed Machinists could be called back. In the Organization's Rebuttal to that Submission, although other statements of fact are contested, the Organization does not apparently dispute the contention concerning the agreement to assign Machinist the work as alleged. In any event, even if that fact was disputed, without more, we do not believe under the circumstances of this case that a different result is warranted.

Finally, we have examined the sections from Award No. 3, Public Law Board No. 2728 cited by the Organization in its Rebuttal to the Machinists' Third Party Submission, and we are not persuaded that those sections change the result in this case. That case, like Award No. 2 discussed above and in our passenger brake Award, did not involve the transfer of work under the 1964 Shop Crafts Agreement.

Therefore, based upon this record, the Claim must be denied.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.