

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11459  
Docket No. 11200  
88-2-86-2-3

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada  
PARTIES TO DISPUTE: (  
(Seaboard System Railroad Company

STATEMENT OF CLAIM:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement, specifically Rules 8, 9, Appendix, 'Q', 15 and Rule 103 of the Carmen's Special Rules, when Carmen R. E. Futch was refused the right to protect his regular assigned wrecker job on January 28, 1981 when the wrecker was called to Anthony, Florida for a derailment.

2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carmen R. E. Futch for 39 1/2 hrs at the time and one-half rate account his violation of our current working agreement by the company.

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 essential facts and circumstances, including the identity of the Claimant, as well as the other party, are as contained in the Findings of Public Law Board No. 3898, Award No. 5. Therefore, these will not be restated herein.

However, turning to the merits of the claim, the Board finds itself in Agreement with that part of the Organization's dissent to Award No. 5 of PLB No. 3898 which dealt with its construction of the controlling Rule. Nonetheless, the record clearly reveals that the Organization as well as the Claimant (although he did not file a claim even though he had been assigned to the Crane for a number of years) had effectively acquiesced to the practice that it now challenges. At no time was the Carrier, prior to the claims at

issue, put on notice that the arrangements which had been in practice for a number of years were no longer acceptable.


In view of all of the foregoing, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of April 1988.