

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11778  
Docket No. 11590-T  
89-2-88-2-70

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ A Division of TCU  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company violated Rules 25A and 102 of the controlling Agreement. That the Missouri Pacific Railroad Company be ordered to compensate Carmen Floyd Rogers for July 17, 1986 and Clarence Ham for July 21, 1986 in the amount of twelve (12) hours for each Carman. Train # REEPA leaves Reisor yard, Shreveport, Louisiana, on each Monday and Thursday of each week, this will be a continuous claim each week until violation is corrected.

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.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute and did not file a Submission with the Division.

A continuous Claim is made by the Organization on behalf of Claimants alleging that Carrier violated Rules 25A and 102 of the Agreement. The Organization claims that inspection and air brake testing of freight cars departing Reisor Yard was performed by a switchman in violation of the Agreement.

The Carrier denies any violation of the Agreement arguing that Carmen have never previously performed such work at Reisor Yard. It notes that since 1981, trainmen at Reisor have performed air brake tests. The Carrier also denies exclusivity for the Carmen's craft and notes that the majority of cars in the train originated in Shreveport.

In this case, the record simply does not support the finding of violation of Rules 25A and 102 of the Agreement. It is clear that the train in dispute departed Shreveport with only "a fill being added at Reisor." The Organization does not refute the Carrier's statements in its letter of January 11, 1988, including the assertion that:

"there are no carmen assigned or on duty at Reisor and there have been no carmen at Reisor since its opening in 1981." (emphasis in original)

In addition, it is unrebutted that "carmen have never performed any air brake testing or inspection type work at Reisor before."


In the facts of this case and based upon well accepted criteria for such decisions, we must deny the Claim on the same basis that we have evaluated similar claims (Second Division Awards 11418, 11422, 11425). The Organization has not brought forth evidence to demonstrate that Reisor Yard was a departure yard or terminal in which Carmen were on duty. In fact it was not, and therefore the Claim must be denied (Second Division Awards 11021, 11093, 11601, 11493).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1989.