

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11859
Docket No. 11603
90-2-88-2-85

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Soo Line Railroad Company

STATEMENT OF CLAIM:

1. That the Soo Line Railroad Company violated the current agreement, when it improperly assigned Assistant Communication Maintainer Tom Gray, on December 13, 1986, to install radios in engines at Shoreham, Minneapolis, Minnesota.

2. That, accordingly, the Soo Line Railroad Company should be ordered to compensate the Claimant M. A. Kahl, for eleven (11) hours at the straight time rate.

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.

On December 13, 1986, the Carrier utilized Assistant Communication Maintainer Gray to install seven radios in locomotives at Shoreham Yard. The Organization immediately filed a Claim in that the Carrier violated the Scope of the Agreement when it assigned the work to Communications Maintainer Gray who was assigned to the Radio Shop at St. Paul, Minnesota and working under the Milwaukee Agreement. The Organization specifically pointed to the July 18, 1985 Agreement in support of its position that Claimant was entitled to the work under the Soo Line Agreement.

Carrier denied the Claim for numerous reasons. First, the Carrier alleged that the work was performed on an emergency basis. Second, it argued that the disputed work could have been performed at either Shoreham or St. Paul. It further maintained that Claimant was on duty, compensated at the overtime rate and was not available when work was done.

Our review of Paragraph 4 of the July 18, 1985 Employee Protective Agreement, as well as Paragraph 4 of the August 20, 1986 Implementing Agreement (#6) and the August 28, 1986 Letter of Understanding is that taken as a whole they cannot be considered supportive of the Organization's Claim. This Board has no jurisdiction to consider such issues raised on the property under said Agreements as they are reserved to be handled by the Employee Protective Agreement. If this Claim before the Board were based solely upon these Agreements, we would have no option but to dismiss for lack of jurisdiction (Second Division Awards 11427, 11163, 7951; Third Division Awards 26255, 24628, 23193). Argument has been raised before us that Section 9 of the Implementing Agreement states that "such dispute may be handled" allowing for it to come before the Adjustment Board for resolution. We concur with the reasoning of Second Division Award 7353 that the word "may" as used in the "...agreement is permissive only to the right to appeal and not as to forum."

On merits the Claim is made for a violation of the Scope Rule. We find no basis for the Claim on those grounds. We find a lack of probative evidence presented by the Organization to support alleged Carrier violation (Second Division Award 11422). In fact, the Organization fails to rebut the August 18, 1987 letter stating that:

"Mr. Gray...continues to retain and accumulate seniority on the Soo Line Schedule. Inasmuch as the Claimant was not qualified...and was, in fact, junior to Mr. Gray, the Carrier's action was completely proper."

The Organization states Claimant did perform the work, but does not dispute that Gray retained Soo Line seniority and was senior to Claimant.

The Board finds no basis for the Organization's arguments that Carrier failed in its affirmative defense. Carrier indicated an emergency and explained its rationale. We find no probative evidence presented by the Organization to substantiate the Claim made before this Board. We find no Agreement Rule which was, from the evidence, violated by the Carrier when it assigned Mr. Gray rather than the Claimant to install radios in the locomotives at Shoreham Yard.

A W A R D


Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1990.