

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

(Brotherhood Railway Carmen/Division of TCU  
PARTIES TO DISPUTE: (  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The Chicago and North Western Transportation Company violated the contractual rights of Carmen Wayne Peterson, J. Weatherill, Gus LaScala and Jerry Dirks under Rules 15, 20, 30, 58 and 76 and Article V of the Agreement of September 25, 1964, as amended December 4, 1975 and November 19, 1986, when the carrier permitted other than carmen to perform the work of inspection and bad ordering freight cars for repair, coupling air hose and making terminal air brake test on incoming train CUITX on January 9, 1989 and also departing train RMAMC on January 21, 1989 and CBEMA departing on January 30, 1989 from the carrier's Council Bluffs, Iowa terminal.

2. Accordingly, the four carmen are entitled to be compensated as follows:

Carman Wayne Peterson - four (4) hours pay at the straight time rate amounting to a total of fifty-six dollars and thirty-six cents (\$56.36) for carrier's violation of January 9, 1989.

Carman J. Weatherill - four (4) hours pay at the straight time rate amounting to fifty-six dollars and thirty-six cents (\$56.36) for carrier's violation of January 21, 1989.

Carman Gus LaScala - four (4) hours pay at the straight time rate amounting to fifty-six dollars and thirty-six cents (\$56.36) for carrier's violation of January 21, 1989.

Carman Jerry Dirks - four (4) hours pay at the straight time rate amounting to fifty-six dollars and thirty-six (\$56.36) for carrier's violation of January 30, 1989.

3. During the handling of this case on the property the Division Manager failed to deny the portion of the Claim on behalf of Carman Gus LaScala, and therefore, must be paid as presented in accordance with Rule 29.

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.

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

The dispute here involves Claims that work reserved to the Carmen was performed by employees who were not Carmen on three separate dates in January 1989. Specifically:

- (1) The Organization claims that on January 9, 1989, a Foreman performed inspection work while accompanied by a Carman;
- (2) On January 21, 1989, the Organization maintains that a Conductor and a Brakeman made the terminal air brake test on their train and;
- (3) The Organization contends that a Brakeman coupled air hoses on his train on January 30, 1989.

The Board has carefully reviewed the material developed on the property as well as the Submissions of the parties and the cited Awards. After this review, we find no evidence of substantive procedural error.

Turning to the merits of the Claim for work done on January 9, 1989, we agree with the Organization. When so doing, we particularly note the Carrier's letter of March 31, 1989, to the Organization and the Organization's reply of April 3, 1989. We also note that the Carrier's Foreman did not provide his disclaimer statement until some nine months later, rather than shortly after the Claim and the Claimant's statement (attached to the Organization's April 3, 1989 letter).

With respect to the Claim for work performed on January 21, 1989, the Carrier states in part in its denial letter of June 19, 1989, that it was "reasonable and proper for the train crew to perform this service," thereby acknowledging that more than one crewman performed the claimed work. From our review of the record, the Organization has met its burden of proof mainly as shown by its reply, dated August 28, 1989, to the Carrier's letter of June 19, 1989. The Carrier never substantively rebutted the Organization's Claim on the property.


With respect to the Claim for work performed on January 30, 1989, the Carrier's main defense rests on its Claim that the Brakeman named by the Organization was not assigned to Train CBEMA and that the time allegedly consumed for the events at issue are somewhat at variance. These, the Carrier asserts, argue against the validity of the Claim. However, we find that the Carrier has not effectively rebutted the essence of the Claim and, therefore, we conclude that this Claim also is sustained in its entirety.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.