

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12063  
Docket No. 11976  
91-2-90-2-85

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU  
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current Agreement the Carrier improperly assigned the derrick operator's position on November 11 and 12, 1988 at Birmingham, Alabama.
2. That accordingly, the Carrier be ordered to pay Carman B. D. Hand twenty-six (26) hours pay at the overtime 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 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.

This Claim deals with actions taken by the Carrier concerning a derailment and resultant problems with hazardous material.

The Claimant asserts that the Carrier violated the Agreement since it did not use Carmen to perform carmen duties.

The record shows a switching of certain positions and some possible confusion of assignments on the days in question. Nonetheless, the Claimant was designated in a standby capacity for certain labor, and the Carrier did not utilize him; but instead used another employee who was designated into a Foreman's position.

We find a violation, but the request for relief appears to be excessive, since the record shows that the Claimant did perform compensated service for portions of the time involved. Thus, we award the Claimant straight time rates for the time he was not already compensated during the claim period of November 11 and 12, 1988. In this regard see the final sentence of Second Division Award 10984, i.e. "In view of the fact the Claimant was working, this Award is limited to the difference in the rates of pay for the hours in question."

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June 1991.