Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12136
SECOND DIVISION Docket No. 11989-T
91-2-90-2-99

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
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(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current Agreement the Southern Railroad Company improperly assigned relief foreman, Justin Law, to Carmen's duties at Coster Shops, Knoxville, Tennessee, on May 25, 26, 30, 31, June 1 and 2, 1989.

2. That accordingly, the Southern Railroad Company now be ordered to pay Carman R. K. Stooksbury thirteen (13) hours and forty (40) minutes pay 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.

As Third Party in Interest, the American Railway and Airway Supervisors Association, was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The Organization submitted a claim on behalf of a Carman regularly assigned to the second shift and it specified work (on designated days) performed by supervisory personnel in violation of Rule 42, and others.

In response to the Carrier's denial of the Claim, the Organization argues that its employees have performed the work in question until a particular Assistant Foreman was assigned.

We feel that the Organization has presented substantive evidence to show that the work in question has been performed by its employees on a shift where a mechanic or student mechanic is employed and thus there was a violation of the Agreement.

Without waiving its defense on the merits, the Carrier has objected to the request for monetary damages since the Claimant was on duty during the time of the asserted violations and received his full compensation. There is conflicting authority on this question. We will not engage in a debate as to the preferred line of authority in this Award, but rather, under the particular circumstances of this case, we will not award compensation.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of September 1991.