

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12376
Docket No. 12396-T
92-2-91-2-196

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Southern Pacific Transportation Company (Western Division))

STATEMENT OF CLAIM:

1. That the carrier violated the terms of the controlling agreement between Southern Pacific Transportation Company and the Organization effective April 16, 1942, as subsequently amended, Rules 33(a) and 104 when they assigned the work of "jacking up" or "lifting" of freight cars for purposes of effecting repairs to same on various dates in March, 1990.

2. That accordingly, the carrier be ordered to compensate Freight Carmen R. P. Pina, M. G. Dobbs, L. M. Dickson, C. E. Piatt, A. M. Kalogero, and S. J. Hazel eight (8) hours at the time and one-half rate of pay each for the dates specified in March 1990, and for each subsequent day thereafter as long as the violation is allowed to continue.

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.

This claim arose because on certain dates in March 1990, the Carrier assigned employees, other than Carmen, to operate the Big Lift (10005-R) for the purpose of lifting freight cars in order to have their bad order wheels changed. The Organization views this action as a violation of the Agreement since it interprets such work as being exclusively assigned to Carmen.

When the dispute was first discussed on the property, the Brotherhood of Firemen and Oilers also claimed that the work belonged to its Organization. The record reveals that at certain locations on the property, Fireman and Oilers had been used to accomplish the same task.

In view of the jurisdictional nature of this dispute for the allocation of work, Carrier officials urged the Organizations to invoke Memorandum "A" of the Agreement which was designed for such matters. That Memorandum reads in part:

"In connection with and supplementary to the Motive Power and Car Department Agreement which became effective April 16, 1942 . . . numerous changes have been made in the 'Classification of Work' and other Rules under which men have heretofore been working, and a great deal of detail and description of the work has been eliminated, which may result in one craft or class requesting or contending for work that is being performed by another craft or class.

In recognition of the facts above recited, and in order to avoid confusion at the local points and provide an orderly determination of the items of work not specifically stated in the 'Classification of Work' and other Rules of the several crafts, it is agreed that existing practices will be continued unless and until otherwise decided by conference and negotiation between the General Chairman involved and the General Superintendent of Motive Power, for purposes of uniformly applying such decision wherever necessary in the railroad"

Neither Organization was willing to invoke Memorandum "A." Claimant continued to process the claim to this Board. The Firemen and Oilers advised the Board by letter that they were in agreement with the Carrier but would not file a written response in connection with this dispute. It stated that its decision not to intervene in this case should not be considered as a waiver of its right to intervene in future cases under similar circumstances.

From the foregoing and the entire record, it is clear that the parties have agreed upon the procedure for resolving this type of dispute. Failure to utilize that procedure is a bar to consideration of the dispute by this Board.

A W A R D


Claim dismissed.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1992.