

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12505
Docket No. 12125
93-2-90-2-262

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen
(Division/TCU
(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM:

- "1. That the Atchison, Topeka & Santa Fe Railway Company violated the controlling Agreement, specifically Rules 9, 10, 36 and 98, by instructing and/or allowing Relief Supervisor C. Rydberg to perform the duties and work of the Carmen craft on December 4, 1989 when members of the craft were available, willing and qualified to perform that work.
2. That accordingly, the Atchison, Topeka & Santa Fe Railway Company be ordered to additionally compensate Carman W. A. Trammell in the amount of eight (8) hours at his applicable hourly rate of pay for the violation on December 4, 1989."

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 employe 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 and those involved in Awards 12506 and 12507 all turn on the class of work performed by Carman Rydberg who also is used as a Relief Supervisor at Carrier's Richmond, California repair facility. In this award the Organization maintains that Rydberg performed service as a Relief Supervisor on December 4, 1989, but performed routine Carmen's work as well. The Organization's proof is in the form of statements from other Carmen who were working at the time. One of these statements indicates that Rydberg gave Carmen orders as to what tracks to work and at the end of the shift he made out lists and requested dispositions on various cars, etc. Another states that Rydberg told him that "he had to run the rip track and work as a Carman on the same day. That was on December 1, 1989."

Carrier defends on the basis that Rydberg was not working as a Relief Foreman on December 4, 1989. In support of its defense it submits payroll records which indicate the days that Rydberg worked as a Foreman and the dates that he worked as a Carman, during this period. These records indicate Rydberg was paid as a Carman on December 4, 1989.

Carrier is not privileged, under the Agreement, to utilize a Carman as a Relief Foreman and then have him continue to perform his Carmen duties at the same time. However, the proof submitted by the Organization does not adequately establish that this is what occurred on December 4, 1989. For example, the two statements mentioned above as support of the Organization's contentions were prepared on December 21, 1989. The first not only deals with the work performed and/or instructions and direction offered on December 4, 1989, but also includes four other dates - November 27, 28, 29 and December 6, 1989. The broadness of the statement and its generalizations make it unreliable as to what actually occurred on December 4, 1989. When these generalizations are read in connection with the second statement, which concerns December 1, 1989, a date not dealt with in this particular Claim, the Organization's evidence becomes suspect and unreliable. When the totality of the Organization's evidence is considered against the payroll records submitted by Carrier, and made available to the Organization when the matter was under consideration on the property, it cannot be established that Rydberg worked as anything other than a Carman on December 4, 1989. Accordingly, the Claim must be denied.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.