

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12507
Docket No. 12127
93-2-90-2-264

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
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(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 of the September 1, 1974 Agreement, as amended, when they instructed, allowed and permitted C. Rydberg, who was working as a Relief Supervisor on November 29, 1989, to perform the usual and customary duties of a Carman.
2. That accordingly, the Atchison, Topeka & Santa Fe Railway Company be ordered to additionally compensate Carman J. R. Pavia in the amount of eight (8) hours at the applicable hourly rate of pay for the violation."

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 is the third in a series of disputes contending that Carman Rydberg, who is also a Relief Supervisor, performed Carmen's work while under pay as a Supervisor. See Awards 12505 and 12506. In this Claim, Rydberg started work on November 29, 1989 as a Carman. At approximately 9:00 A.M., that date, the Supervisor on duty was dispatched to Pittsburg, California, to supervise work at a derailment site. Carrier set up Rydberg as a Relief Supervisor at that time. Carrier paid Rydberg for the entire shift at the Supervisor rate of pay. Carrier maintains that Rydberg did not perform work as a Carman after being set up as a Supervisor and that it was customary on the property to pay employees used in this fashion for the whole day as a Supervisor.

The Organization has not submitted evidence demonstrating that Rydberg worked as a Carman subsequent to 9:00 A.M., the time that he was set up as a Supervisor. Moreover, the Organization has not demonstrated that Rydberg performed any Supervisor duties between the start of his shift and 9:00 A.M., when he was assigned as a Carman. This missing proof causes the Claim to be flawed. Moreover, the Organization cannot expect to prevail in a contention that the Agreement is violated simply because Carrier chose to pay Rydberg for an entire shift as a Supervisor when it became necessary in an emergency situation to set him up as a Supervisor after he had started work as a Carman.

The Claim will be denied for lack of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

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