

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12551  
Docket No. 12329-T  
93-2-91-2-118

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  
(  
(CSX Transportation, Inc. (former  
(Chesapeake & Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'carrier') violated Rules 32 and 179½ of the Shop Crafts Agreement and Article VI of the November 19, 1986 National Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carmen J. Gore, G. Buckley, and W. O. Hicks (hereinafter 'claimants') when on April 14, 15, 17, 23 and 24, 1988 and May 2, 1988 the carrier assigned employees other than carmen to perform carmen's work.
2. Accordingly, the claimants are entitled to be compensated as outlined below at the applicable carmen's rate for said violation of the aforementioned Agreement rules."

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 employee 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 United Transportation Union was advised of the pendency of this dispute, but chose not to file a submission with the Board.

The Claims contend that Carrier violated the Agreement when on five days in April and one day in May 1988, employees other than Carmen were allowed to lace air hoses and perform necessary air tests at Carrier's Parson Yard, Columbus, Ohio. Before this Board, Carrier defends against payment of the Claims on a number of procedural grounds. However, no adequate substantive defense is offered with regard to the merits of the Claims.

The Board finds Carrier's procedural defenses unpersuasive. First, a difference between the reparations sought in the original claim and that requested before this Board is not normally considered a fatal defect, precluding review on the merits. This Board has frequently modified reparations for a variety of reasons, and when faced with a situation where the reparations sought have been increased in the course of handling on the property, or on appeal to this Board, the original claim is usually considered as controlling, if our Award requires monetary payments.

With regard to Carrier's second procedural argument, that two claims were combined for submission to the Board without its concurrence, it must be noted that the Board encourages the parties to consolidate identical claims, for obvious workload reasons which do not need further detailing here. Such consolidation of identical claims is not a procedural defect, even when done ex parte.


The Board concludes that the Claims have merit. They will be sustained as originally presented.

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 - Secretary to the Board

Dated at Chicago, Illinois, this 28th day of July 1993.