

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12702
Docket No. 12532
94-2-92-2-58

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Brotherhood of Electrical
Workers
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

- "1. That in violation of current controlling Agreement, at the Kansas City Yard, the St. Louis Southwestern Railway Company, improperly assigned Fireman Hostlers to perform Electricians' work on May 2, 1991.
2. That accordingly, the St. Louis Southwestern Railway Company be ordered to compensate Electricians V. E. Herbert of Kansas City, Kansas, four (4) hours' pay at the punitive rate each for the violation of May 2, 1991.
3. The Carrier should be ordered to cease and desist from continual assignment of other than Electricians to perform Electricians work."

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.

On May 2, 1991, eight road locomotive units arrived at Armourdale Yard at Kansas City, Kansas. There is no dispute on the fact that Hostlers disconnected the electrical control cables from the last two units. The Organization filed claim that the work performed was electricians work.

The instant case centers on the issue of whether mechanical forces have by Agreement and practice the right to perform the disputed disconnection of the electrical control cable for the purpose of uncoupling units in the yard. The record shows that the Organization maintained the work was protected by Classification of Work Rule 64, Assignment of Work Rule 34 and Qualifications Rule 63. It also argued on property that the Carrier violated practice in its letters dated June 21, 1991, August 29, 1991, and March 24, 1992. In its letter of August 29, 1991, the Organization argues that:

"The employees have presented the practice of this property. The carrier, has not provided supporting evidence that any long standing practice exists. This is a position that the employees refute and challenge, and will require the Carrier to submit full development of the facts."

A study of the record shows that the Carrier denied that the Rules protected the right of electricians to sole performance of uncoupling or disconnecting diesel units on this property. The Carrier argued that Hostlers were in no violation of the mechanical crafts Agreement when they coupled or uncoupled, connected or disconnected diesel units in the train yard. The Carrier denied any exclusive right or practice thereto by letters dated May 31, 1991, and July 3, 1991. In the Carrier's letter of July 31, 1991, the Carrier stated in pertinent part:

"That the uncoupling and coupling of locomotive power by hostling crews at Armourdale Yard and other locations on the Carrier's property is in accordance with practice of long standing."

The Carrier did not respond to the Organization's letter dated March 24, 1992, which included the only supportive evidence for this Claim. That letter dated March 24, 1992, included six signatures on five separate letters from electricians supporting the practice on the property. The Board makes note that the Organization filed its Notice of Intent on March 30, 1992.

Crucial to any claim of this type is proof through probative evidence that Agreement or practice governs. We have carefully read all Agreement Rules in dispute, including the Hostler's Rules. There exists no expressly stated Rule governing the disputed work on this property. The claim rests on the burden of proof that the practice is as claimed by the Organization. The Board has no knowledge of what occurs on property in its appellate forum except that which it obtains through correspondence of those issues and evidence joined on property. Prior to the letter of March 24, 1992, the Organization's allegations were explicitly rebutted and no evidence had been put forth by the Organization to shift its burden of proof to the Carrier. The case of the Organization fully rests on the weight of the letter and its attached evidence.

This Board is constrained to give the evidence little probative value as it was not fully joined on the property. We conclude that the evidence was submitted momentarily prior to the Notice of Intent so as to preclude a rebuttal or the submission of evidence and argument by the Carrier sufficient to consider it properly before us.

The March 24, 1992, letter with attached evidence of practice responding to the Carrier's denial of October 22, 1991, and coming at nearly the same time as the Notice of Intent is of insufficient weight to sustain the Claim.


It is a firm conclusion of the Board that the Organization has failed to demonstrate Agreement or practice supporting its claim. A review of the record as fully developed and disputed on the property lacks sufficient probative evidence to support an Agreement violation by the Carrier. The Claim must be denied for lack of proof in these instant circumstances where the merits of the issue have not fully been joined.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.