

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12867
Docket No. 12592-T
95-2-92-2-116

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

(Brotherhood of Railway Carmen
((Division of TCU)
PARTIES TO DISPUTE: (
(CSX Transportation Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake and Ohio Railway Company, CSX Transportation, Inc., (hereinafter referred to as 'Carrier'), violated the controlling Shop Crafts Agreement, specifically Rules 32 and 154, when the Carrier improperly assigned employees from the Stores Department to perform work on positions formerly and historically held by Carmen Helpers.
2. Accordingly, the Carrier be ordered to additionally compensate Carmen Helpers L. D. Evans and C. S. Curnell for all regular wages lost commencing on January 18, 1991, and continuing until such time as the Claimants are recalled to fill the Carmen Helper positions, and further that each day beginning January 18, 1991, be credited to a specific calendar day for benefits accruing to other employees, including but not limited to, vacation rights, loss of coverage under life insurance, health and welfare Claimants would have received."

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 Transportation Communications International Union was advised of the pendency of this dispute, but did not file a Submission with the Board.

The Organization claims that its Agreement was violated when Carrier utilized Store Department employees working under a different Craft's Agreement to check out Mechanical Craft supplies and material and transport such items to various points within the Russell, Kentucky, Raceland Car Shop, where they were used by Shop Craft employees in the repair, rebuilding and new construction of rolling equipment. Carrier defends against the assignment of Store Department employees to the tasks involved on a variety of grounds, but emphasizes that an identical dispute between the same parties arising at the same location was adjudicated in Carrier's favor in Award 1 of Public Law Board No. 4290, on August 13, 1987. Carrier argues that the doctrine of stare decisis controls and that the instant claim must be dismissed.

The Board examined Award 1, Public Law Board No. 4290 and notes that the facts involved in that case fit, four square, with the facts under review in this docket. Further, the same arguments and Agreement provisions raised in this case were raised and reviewed in that case. Accordingly, under well defined authority, this Board has consistently held that if a claim or grievance it is reviewing involves the same controlling facts and the same contractual provisions that have been adjudicated in an earlier dispute, the decision in the prior case must be followed, unless it is clearly demonstrated that the earlier Award was in palpable error. (See Second Division Awards 6413, 11323, 11506 and 11702; Third Division Awards 4569, 23031, 28557 and 29108; and Fourth Division Award 4884.) In this record it has not been demonstrated that Award 1, Public Law Board No. 4290 is in error. Under the authority of that Award the claim involved in this docket will be dismissed.

AWARD

Claim dismissed.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.