

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13370

Docket No. 13174

99-2-96-2-78

The Second Division consisted of the regular members and in addition Referee Eckerhard Muessig when award was rendered.

**(International Association of Machinists and
(Aerospace Workers (District 19)**
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- “(1.) The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 5-F-1, Scope, Appendix ‘C’, and past practice and customs.**
- (2.) Accordingly, the claimants are entitled to the remedy as requested. Additional 8 hours pay for each claimant at their applicable straight time hourly rate as requested in the three (3) claims submitted on the property in their behalf: Claim Nos. 2347, 2356, and 2367. As mutually agreed, these three (3) claims are being submitted for adjudication as one.”**

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 were given due notice of hearing thereon.

In October 1993, the Organization submitted a total of three claims. The parties agreed that the claims would be adjudicated as one claim.

The issue in this case is whether the Carrier violated the Scope of the parties' Agreement by allowing leased trucks to be repaired at a garage not owned by the Carrier on September 16, 18 and 20, 1993.

The Organization contends the work belongs to the Machinist Craft and that the Carrier was required to utilize members of the craft to perform the work.

Before addressing the merits, it is noted that a number of arguments and new evidence has been presented by the parties in their Submission before the Board that were either not raised or not presented on the property. It is a basic tenet of the Railway Labor Act that the Board is unable to consider argument or evidence not joined on the property. Accordingly, our consideration of this claim is limited to those issues properly before us.

With respect to the voluminous on-the-property record, it is clear, in light of the complex and lengthy proceedings on the property, that the parties had difficulty reconciling the relevant facts and issues. The Board finds itself in a somewhat similar situation. There are key or controlling evidentiary conflicts which we are unable to resolve at this level. Accordingly, we must dismiss the claim.

AWARD

Claim dismissed.

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ORDER

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 10th day of March 1999.