

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13390
Docket No. 13302-T
99-2-97-2-75**

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Pere Marquette
(Railway)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Carrier violated Rule 25, 28, and 57 of our current Agreement when they unjustly denied Carman R.J. Fournie to perform the carman’s work regular assigned to carmen from May 27, 28, 29, 30 and 31, 1996 (five days).**
- 2. That accordingly, CSX Transportation, Inc. be ordered to compensate Carman R.J. Fournie eight (8) hours pay at his respective rate of pay for five (5) days for this 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 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.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

Five claims were filed with the Detroit Division Mechanical Superintendent by the Claimant through the Organization. The claims allege that the Carrier violated Rule 57 of the Agreement when it blanked a vacationing Carman's position for the five days from May 27-31, 1996 and did not call the Claimant to fill the position. All five claims have been combined in the instant case before the Board.

The claims were denied on grounds that there was no work performed by train crews or other Carmen on the dates of May 27, 29 and 31, 1996 and that on the other two days there were only 12 and five cars inspected. According to the denial letter by the Mechanical Superintendent the inspection work on the 17 cars in question was done by Carmen from another location.

In Rules cases such as the instant one the burden lies with the Claimant to provide sufficient substantial evidence that an Agreement violation has taken place. A review of the record fails to convince the Board that such burden has been met in the instant case. In accordance with numerous precedent set by the Board in the past mere ". . . assertions (of a violation of a labor Agreement) do not constitute proof" (See Second Division Award 5509).

The only work performed was on the dates of May 28 and 30, 1996. Allegations of violations of Agreement Rules for the other days are denied because there is no evidence of work performed. With respect to the other two dates the amount of documented work was of such minimal amount as to fall under the de minimis doctrine (See Second Division Awards 8360 and 10875; Third Division Awards 20311 and 23355; Public Law Board No. 3840, Award 4). Further, this work was performed by members of the Carman craft.

On basis of the full record before it the Board must deny the claims.

AWARD

Claim denied.

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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 12th day of April 1999.