

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13391
Docket No. 13303-T
99-2-97-2-76**

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 Rules 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 the carmen from July through 26, 1996 (sic). (ten 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 ten (10) 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.

The instant claim was filed with the Detroit Division Mechanical Superintendent by the Claimant through the Organization. The claim alleges that the Carrier violated Rule 57 of the Agreement when it blanked a vacationing Carman's position from July 15 to July 26, 1996 and permitted train crews to inspect and air test outbound trains.

The claim was denied on grounds that there was insufficient information provided to the Carrier with respect to train numbers and dates when the alleged infractions were supposed to have taken place. In reviewing the further processing of this claim on property the Board notes that issue of the train numbers and dates when such infractions were to have taken place was never cleared up.

Carrier's rejection of the claim is also based on the argument that there was insufficient work to have called in the Claimant on some days and that on other days involved in the claim no Carman work at all had been done at the point in question.

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). Further, Carrier's arguments of insufficient work available at the location to have called the Claimant on the days in question were insufficiently challenged by the Claimant.

On basis of the full record before it the Board has no alternative but to deny the claim.

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.