

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13894
Docket No. 13780
06-2-05-2-34

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

(Brotherhood Railway Carmen Division of Transportation
(Communications International Union, AFL-CIO

PARTIES TO DISPUTE: (

(The Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Side Letter No. 1, when they sent Carman Michael Morton to Auburn, ME and then to Rumford, ME to repair freight cars, on June 29, 2004.
2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Mark Derocher in the amount of eight (8) hours at the straight-time rate and four (4) hours at the time and one-half rate. This is the amount he would have earned had the Carrier not violated our Agreement.”

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.

The Organization argued that there was a practice to assign Carmen to wrecking work according to road truck territories. On June 29, 2004 the Carrier instructed a Carman, Michael Morton, to travel to Auburn, ME and then to Rumford, ME to repair freight cars. The Organization argued that the Carrier violated the Side Letter No. 1 between the parties. While the Carrier claimed there is no past practice, the Carrier and the Organization adjusted road territories accordingly in 1995. When the Agreement in 1995 to combine the BM, MEC and Portland Terminal Railway into the Springfield Terminal Agreement, the wrecking territory and the road truck territories were delineated accordingly. This was accepted by both Parties. It was clearly acted upon and unequivocal. The Organization attempted to get the Carrier to discuss the matter at the bargaining table, however, it would not. Therefore, the practice still applies and the claim should be sustained.

The Carrier argued that the Organization has the burden to prove by substantial evidence contained in the on-property record of this case that the Carrier violated the Agreement. The Organization provided no support for this claim. There is no portion of the Agreement that supports the Organization's claim and, therefore, it cannot be sustained. There is no rule nor any valid past practice to support the Organization's contentions. In addition, there are unsubstantiated damages and, therefore, the claim should be denied.

Upon review of the evidence the Board finds that there is insufficient evidence provided by the Organization to show a proven past practice. In the absence of such evidence the Board has no alternative but to dismiss the claim. The Organization is cautioned that, if it is going to bring such a case forward again, it provide more and specific proof that a past practice existed.

Claim dismissed in accordance with the Findings.

Form 1
Page 3

Award No. 13894
Docket No. 13780
06-2-05-2-34

AWARD

Claim dismissed.

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 25th day of April 2006.