

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13960  
Docket No. 13849  
08-2-NRAB-00002-080001**

**The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.**

**(Brotherhood of Railway Carmen Division of TCIU  
PARTIES TO DISPUTE: (  
(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rules 2.1 and 12.2 when they allowed or otherwise ordered Carman Eric Olson to perform work on GMX (Guilford Motor Express) a non-union Company, instead of filling his regular position at Ayer, MA.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Eric Olson in the amount of eight (8) hours at the straight time rate of pay. 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.

It is the Organization's position that the Carrier violated Rules 2.1 and 12.2 on September 29, 2006, when it ordered the Claimant to abandon his position at Ayer, MA, to work for a non-union company (GMX) unloading trailers. According to it the Claimant's position was subsequently backfilled by Carman Jarret. Based upon those facts it argues the Claim should be sustained.

It is the position of the Carrier that it did not violate the Agreement. It argues that Claimant was not ordered off his position and that he reported for duty at the proper time and performed work within the scope of his duties consistent with Rule 2 of the Agreement and there was no backfilling of Claimant's position. Therefore, it argues that the Organization has not met its burden of proof that a violation of the Agreement occurred and it requests that the claim be denied.

The Board has thoroughly reviewed the record and finds that the parties' positions are totally contradictory regarding what transpired on September 29, 2006. The Organization states that Claimant was forced off his position and it was backfilled by Carman Jarret whereas the Carrier states Claimant was not forced off his assignment and Jarret did not backfill Claimant's position. The instant case has an irreconcilable dispute in facts and is devoid of any evidentiary support such as statements from Claimant or Carman Jarret explaining what happened on September 29<sup>th</sup>. Therefore, the Board offers no opinion on whether or not the allegations of the claim violated the Agreement as it is impossible to determine whether or not Claimant was required to abandon his position to work another job. Instead the Board finds and holds that we must deny the instant claim for lack of proof.

**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 23rd day of October 2008.**