

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24956
Docket No. 44555
98-1-96-1-S-6726

The First Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(United Transportation Union
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Claim in behalf of Switchman L. Grzybek for lost earnings on July 16 (2), August 17 and 18, 1993 account a trainmaster was used to perform yard service duties."

FINDINGS:

The First 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.

Claimant, on dates of claim, was employed as a Switchman in the Chicago Terminal. The Organization asserts Trainmasters Mike Mont and Rich Marion performed work reserved to Switchmen. Specifically, the Organization avers Mont spotted engine #382 on Track 4B at the west end of "B" Yard at 4:40 P.M. on July 16, 1993. It further claims Mont, at 11:20 P.M. on August 17, 1993, spotted track 3B at Bensenville Yard and coupled air joints on ten Harbor cars that were set out earlier by

assignment #1319. Finally, it states Marion made a joint on 70 track in the Bensenville Yard by radio transmission to engine #383 on August 18, 1993. According to the Organization, Claimant was rested and available at all these times.

Carrier first replies that Claimant was either on duty or unavailable at the time of two of these incidents. According to Carrier, Claimant worked as Yard Foreman on Job #1303, starting at 2:30 P.M. on July 16, 1993, and as Yard Helper on Job #1330, starting at 3:00 P.M. on August 17, 1993. There is, however, no record of the Carrier ever raising this defense during the course of the handling of the dispute on the property. While the Organization had argued Claimant was rested and available, the Carrier merely denied the Organization had proven this point. The Carrier, however, raised this issue as a defense which, if true, could easily have been documented by records under the Carrier's control. Accordingly, we must consider Carrier's defense on this basis to be untimely raised as well as unproven.

The Carrier has not denied the Trainmasters performed the work alleged by the Organization. It does not matter that all crews in the yard were working with the requisite number of employees under the applicable Agreements, or that the crew might have requested assistance from the Trainmasters, as the Carrier suggests. The evidence supports the conclusion that the Trainmasters performed work that, by Agreement, custom and practice, is reserved to Switchmen. It is not a defense that the work was performed in the interest of efficiency. Other employees may not waive Claimant's right to perform work under the Agreement.

It appears from the record that work was performed by the Trainmasters on three occasions, although two claims were filed for July 16, 1993. They are obviously duplicative. Finding that the Agreement was violated, we will sustain the claim as presented, except for the second claim on July 16, 1993, which is denied.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 23rd day of November 1998.