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**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25035
Docket No. 44610
99-1-97-1-S-6737

The First Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"Claim in behalf of Yard Foreman A. DeSardi for basic penalty day account Chief Yardmaster K. Best usurped the duties of the utility man on March 5, 1995."

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.

On the claim date Claimant was on duty and under pay performing the function of utility man with his crew. He was away from the area where the Chief Yardmaster allegedly spotted Claimant's train in the clear on a specific track, a function which the Organization maintains belongs exclusively to Claimant's craft. The Organization argues that the Chief Yardmaster should have waited for Claimant to perform that function.

At the outset the Carrier Interposes the defense of improper Claimant. It cites numerous Public Law Board awards, some relying upon awards of this Board, standing for the proposition that a Claimant on duty and under pay at the time service giving rise to the claim was performed is not a proper Claimant which mandates that the claim be dismissed. Our review of the authorities cited by the Carrier leads us to conclude that they so hold.

The Organization argues that the defense of improper Claimant was not raised on the property and therefore is not available to the Carrier before this Board. However, the letter from the Carrier's highest officer designated to handle disputes such as the one in this case states in pertinent part: "The Claimant was fully employed on the date of claim, and engaged in activities away from the area at the time of the claim. I see no basis why this person is eligible or deserving of another day's pay." While that statement does not say specifically that the Carrier is raising the defense of improper Claimant, the use of the word "eligible" in the context of the additional statement that Claimant was "... fully employed . . . in activities away from the area . . ." where the event giving rise to the claim occurred clearly indicates that the Carrier is defending the claim on the basis that Claimant is not entitled to receive the payment claimed. We believe such statement sufficiently raised the defense of improper Claimant. Accordingly, we believe the Organization's point is not well taken.

Our review of the arbitral authorities relied upon by the Carrier leads us to conclude that they are on point, and they persuade us that the the claim herein is procedurally defective.

AWARD

Claim dismissed.

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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 First Division

Dated at Chicago, Illinois, this 21st day of June 1999.