

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25061  
Docket No. 44613  
99-1-97-1-S-6741

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

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

**STATEMENT OF CLAIM:**

“Claim in behalf of Utility Person D. F. August for basic penalty day account Trainmaster R. Bailey assisted yard assignment #1315 on February 15, 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.

It is the contention of the Claimant that while working the utility position on Assignment No. 3871 at Bensenville Yard in the Chicago Terminal that other than a train service employee was observed assisting Bensenville Yard Assignment No. 1315 spot their train on K-17 track in Bensenville Yard in violation of the 1994 Crew Consist Agreement, Appendix A, Section 8, and that he is therefore entitled to a penalty payment of a basic day.

Section 8 of Appendix A of the 1994 Crew Consist Agreement reads:

"No company supervisor, official, nor craft employee, other than those working under the UTU agreement, will be used to supplant or perform work exclusively reserved to UTU-represented employees."

It is evident in study of the record that the Claimant has failed to meet a necessary burden of proof to substantiate consideration of the claim on its merits.

The claim as filed and appealed did not articulate the work that was allegedly performed in violation of the above mentioned rule. The claim as instituted on the property consists of a brief written note that reads: "Claim 8 hrs. YDM R. Bailey spotting 'K 17' with assignment #1315 while U-man was attached to #125 1630 hrs."

In denial of the claim on the property the Carrier identified the referenced "R. Bailey" as being a Trainmaster rather than as cited in the claim, a Yardmaster. More importantly, the Carrier advised the Organization in writing that there is nothing within the crew consist provisions or schedule rules that reserves the work of advising a crew or train of when it is in the clear to utility positions and that the Trainmaster did not perform any work that is not performed by all sorts of employees on a regular day to day basis across the system. The Carrier also submitted that Assignment No. 1315 was staffed in accordance with applicable contract provisions and that the advice of being in the clear neither resulted in nor permitted the elimination of any position. Further, the Carrier asserted that even if the Trainmaster had spotted or told the assignment that it was in the clear that such one time advice was de minimus in nature and would have taken but a few minutes to perform.

The Carrier also advised the Organization in its written denial of the claim that since the Claimant was fully employed on the date of claim, and engaged in activities away from the area at the time of the claim, that he was not eligible or deserving of another day's pay.

The statements of the Carrier remained uncontested during the handling of the claim on the property. In particular, nothing of record was shown by the Organization to establish that the Trainmaster had been used to "supplant or perform work exclusively reserved to UTU-represented employees" in violation of Section 8 or Appendix A of the 1994 Crew Consist Agreement. Moreover, it is evident that the

nature of the claim in this dispute does not involve circumstances like those referenced in Awards cited to us by the Organization, i.e., where a Roundhouse Foreman spotted and fueled an engine on a dock track, where a Yardmaster accompanied a yard crew to pick up a disabled tie tamper and gave hand signals for the move to the yard engineer, or where a Trainmaster coupled air joints on cars in the performance of work that was shown by custom and practice to be reserved to UTU-represented employees.

Under the circumstances, we have no alternative but to deny the claim in a finding that neither the Claimant nor the Organization on his behalf have met a necessary burden of proof by providing convincing factual data to support the claim.

**AWARD**

Claim denied.

**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 8th day of November 1999.