

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Referee Martin F. Scheinman

Award Number 3914
Docket Number 3947

PARTIES TO DISPUTE: Allied Services Division/Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (P-92) that:

- (1) The Company violated the Agreement especially Rules 1, 2, and 28 among others when it did not call the senior available patrolman to perform required work on November 9, 1978.
- (2) The Carrier shall now compensate the senior available patrolman eleven and one-half hours (11½) at the punitive rate of the road patrolman position for November 9, 1978.

OPINION OF BOARD: On November 9, 1978, Carrier's Lieutenant L. M. Barnes, in conjunction with the Maryland State Police staked out the Riverside Shops Complex in Baltimore City. There, they conducted a surveillance of fuel oil deliveries by non-Carrier fuel trucks to the Riverside Shop Complex. This surveillance was from approximately 7:30 a.m. to 7:00 p.m.

The Organization claims that the surveillance undertaken was the work of the patrolmen rank. Therefore, it asks that the senior available patrolman should have been called to perform the stakeout at the punitive rate. The Organization asserts that Rules 1, 2 and 28 were all violated. These provisions state:

"Rule 1 - Scope and Work of Employes Affected

These rules shall govern the hours of service, rates of pay and working conditions of all employes engaged in the work of the craft or class of Patrolmen.

Rule 2 - Definition of Patrolman

Employes below the rank of Lieutenant or equivalent title shall be in the craft or class of Patrolman and come within the scope of this Agreement.

Rule 28

(g) Where work is required on an overtime basis, other than covered by paragraphs (d), (e and (f) of this rule, regular assigned employes observing their rest day will be given preference in seniority order ahead of regular assigned employes working on that day. If there are no available employes observing their rest days then regular assigned employes working that day, who are available, will be called in seniority order."

Carrier, on the other hand, denies that the Agreement was violated. It maintains that Barnes performed no duties that were exclusively those of the patrolmen class.

As we recently decided in Award 3913 the record evidence here simply does not support the Organization's claim. There is a complete failure to establish an Agreement violation. Nothing in the Agreement articles cited, may be construed as prohibiting what occurred on November 9, 1978. In fact, it appears that Barnes performed precisely in the manner of the Lieutenant rank.

Thus, we will deny the claim in its entirety.

FINDINGS:

The Fourth Division of the ~~Adjustment~~ Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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.

The parties to said dispute were given due notice of hearing thereon.

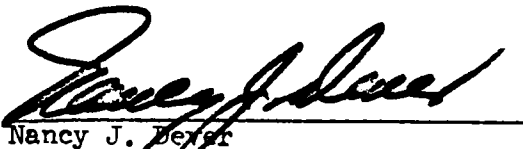
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Beyer
Acting Executive Secretary

Dated at Chicago, Illinois, this 6th day of May, 1982.