



Award No. 5198
Docket No. 4887
2-N&W-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, the operating of Derrick such as was performed in Elmore Train Yard, Elmore, West Virginia on July 8, 1963, is the work of Carmen employed at Elmore, West Virginia.

2. That on July 8, 1963, the Carrier did not comply with the controlling Agreement, and particularly Rules 10 (c) (e), 29 and 110, also Supplement No. 33, when a Carman from another seniority point, was assigned to perform Carmen's work in Elmore Yard.

3. That the Carrier be ordered to additionally compensate Carman M. G. Harvey for four (4) hours and twenty (20) minutes account Carman from another seniority point being used as derrick operator on July 8, 1963, at Elmore, West Virginia.

EMPLOYEES' STATEMENT OF FACTS: M. G. Harvey, hereinafter referred to as claimant is employed as a Carman, by the Norfolk and Western Railway Company, hereinafter referred to as Carrier, in its Car Department at Elmore, West Virginia, and was the only qualified Derrick Car Engineer, on the Elmore Yard's Overtime Board. (Emphasis ours.)

On July 8, 1963, the Carrier assigned a Carman from Shaffers Crossing, Roanoke, Virginia, a seniority point approximately 125 miles from Elmore, West Virginia to operate a derrick in loading electrical equipment in Elmore Yard. The claimant, a qualified Derrick Engineer, and carried on Elmore's seniority roster and Train Yard Overtime Board, going off duty at 3:00 P. M. on the date in question, within a few hundred yards of point where work in question was performed, during the hours claimed for, was available, and entitled to a call from the Overtime Board to perform this service in Elmore Yard.

this claim had merit, Carman Harvey was not the proper employe to make such a claim. Carman Harvey was on duty working his assigned position during the loading of the electrical equipment.

Wreck derricks have, in the past, been used for purposes other than wrecking service. This work train was rented and used from July 7 through 13, 1963, loading this electrical equipment along the right of way from Elmore to Roanoke and the loading at Elmore was incidental in connection with this entire operation.

The Carrier affirmatively states that the substance of all matter referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto.

The contentions of the Organization should be dismissed and claim denied.

Oral hearing is not requested unless requested by the Organization.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

M. G. Harvey, the claimant, a Carman, claims 4 hours and 20 minutes' overtime pay for July 8, 1963 because an employe from another seniority point was used as Derrick Engineer at Elmore train yards.

There was no wreck, derailment or disabled cars at Elmore on date in question.

Carmen did not have the exclusive right of loading railroad cars in the yard limits of Elmore. The Claimant was not an engineer. He was only an employe of the Carrier. The Claimant could not make the claims he did as he was not the proper person to make the claims. The Derrick Engineer might have been the proper Claimant.

The claim under all the facts herein, must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5196

The second paragraph of the Employees' Statement of Facts reads as follows:

"When the Carrier elected to work the Coal Hump overtime, instead of putting on a third shift, it was agreed upon locally, when the Hump worked in excess of two and one-half (2½) hours the pit inspectors would be called from the Carmen's Overtime Board. In Carrier's Master Mechanic L. S. Fidler's letter of May 4, 1964, addressed to Local Chairman G. C. Watkins he states, 'There was no such understanding or agreement between the Local Chairman and the General Foreman at Russell Terminal.' However, he did admit it had been the past practice to call men from the Carmen's Overtime Board when the Hump worked in excess of two and one-half (2½) hours."

On reading the Employees' Statement of Facts quoted above it will be noted that it was the carrier who denied that there was any such an agreement. In the findings of the majority quoted below they say it was the Organization that denied there was any such practice; that there was such an understanding.

"According to past practice, in calling men from the Carmen's Overtime Board when the hump worked in excess of 2½ hours, which practice the Organization at first denied but later stated that there was such an understanding * * *."

The seventh paragraph of the Carrier's Position reads as follows:

"In denying this claim * * *, the initial officer denied that any such agreement had been made with the Organization as to the manner in which Carman would be worked on an overtime basis on the local hump and set forth the practice which had been followed * * *."

It will be noted from the quote above from the Carrier's Position that the initial officer denied there was any such agreement that had been made with the Organization. It will be noted from the quote below from the findings of the majority they say the Organization denied that there was such an agreement.

"The Organization denied that there was such an agreement but it admitted there had been a past practice to call men from the Carmen's Overtime Board when the hump worked in excess of two and one-half hours * * *."

The twelfth paragraph of the Carrier's Statement of Facts reads as follows:

"The humping operation resumed and continued without further interruption. However, the trouble with unit 5547 had caused a delay of more than an hour, resulting in the inspector remaining on duty for 2 hours and 55 minutes beyond the close of second shift * * *."

It will be noted in the quote above from the Carrier's Statement of Facts they admitted the inspector worked 2 hours and 55 minutes beyond the close of second shift. It will be noted in the quote below from the findings of the majority they say the inspector stayed on until 11:00 P. M., his quitting time and left; then state that the carrier did not violate the agreement by not assigning overtime work which was not needed.

"The reason the carman was not worked the 2½ hours was due to the fact that at midnight trouble developed on the locomotive unit. Mechanics were called in to see if they could repair the unit; but they could not do so. Therefore, the inspector only stayed on until 11:00 P. M. his quitting time and left. Accordingly the Carrier did not violate the agreement by not assigning overtime work which was not needed."

The foregoing shows the discrepancies indulged in by the majority in arriving at their conclusions in Award 5196. We, the Labor Members, dissent.

The same confused and extravagant findings are used to deny Awards 5193, 5194, 5197, 5198, 5199 and 5200 and we therefore likewise dissent to these awards.

Oren Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger