

Award No. 843

Docket No. 791

2-DL&W-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: Under the controlling agreement, Patrick Ferrara, and Edward Holtz, are entitled to a time claim of three and one-half (3½) hours at rate and one-half for carmen's work performed by Machinists Bercich and Enny, on Passenger Car No. 244, on Thursday, July 31, 1941.

EMPLOYES' STATEMENT OF FACTS: At Hoboken, New Jersey, car department employees are assigned to work six days a week in a spread of seven days. The time is arranged so that all carmen are regularly assigned one day off each week, and this day off is considered their Sunday.

Thursday, July 31, 1941, was the regular assigned day off of Passenger Carmen Patrick Ferrara and Edward Holtz. They were off on this day. Patrick Ferrara's hours of work were from 7:00 A. M. to 3:00 P. M. and Edward Holtz worked the hours from 6:30 A. M. to 3:30 P. M., and they were available for service during said hours.

Machinists Bercich and Enny are employed in the car department working from 6:30 A. M. to 3:30 P. M. on the aforesaid day.

Machinists Bercich and Enny worked their regular hours on Thursday, July 31, 1941, and were assigned to the work of placing snubbers on Passenger Car No. 244 for three and one-half hours. This work was performed in the car department.

Passenger Carmen Ferrara and Holtz were not called for said work. They claim three and one-half hours at rate and one-half and the carrier denied their claim.

POSITION OF EMPLOYES: Machinists Bercich and Enny are employed on the passenger repair track at Hoboken, New Jersey, they are shown on the machinists' roster and perform work that is consistent to their classification of work. The employees contend that Rules 27 and 98 of the current agreement were violated when these men were assigned to perform work recognized as carmen's work in placing of snubbers on Passenger Car No. 244. Rule 27 reads in part as follows:

Rule 27—"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft."

Carmen's classification of work rule, Rule 98, in part reads:—

ists' work under Rule 57, and therefore there can be no violation of Rule 27. There is no reason in this case for the employees to rely on Rule 4 which covers overtime, since, as previously stated, there was no immediate need for this car and no overtime involved. As shown in the statement of facts, the car was on the repair track for two days. The application of snubbers takes about three and one-half hours a set.

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 employees 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.

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

This Division finds that the particular character of work involved in the instant dispute is that of carmen's classification; however, in view of all the circumstances surrounding the case prior to the inception of the instant dispute, the claim for compensation cannot be sustained.

AWARD

Claim sustained to the extent indicated in the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of October, 1942.