Award No. 1283
Docket No. 1189
2-NYC-CM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (Carmen)

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Messrs. Tom Collins, Fred Hoffman, Emil Jabs, George Smith, E. Schnabel and Carl Bass, members of the Stanley Yard wrecking crew and employed as car repairers on the repair track when not engaged in wrecking, should be compensated at the average hourly earned rate when taken off piece work October 23, 1945, and required to man the wrecker to handle car retarders for the Maintenance of Way Department.

EMPLOYES' STATEMENT OF FACTS: Carmen Tom Collins, Fred Hoffman, Emil Jabs, George Smith, E. Schnabel and Carl Bass, are regularly employed by the carrier at Toledo, Ohio, and are regularly assigned members of the wrecking crew, and when not engaged in wrecking service they repair cars on the repair track on a piece work basis during the hours from 7:30 A. M. to 4 P. M. with a half-hour for lunch from 11:30 A. M. to 12 Noon.

The steam crane engineer and the fireman, Carmen Smith and Jabs, were called to report for duty at 6:30 A. M. October 23, 1945, and the balance of the carmen—Collins, Hoffman, Schnabel and Bass, reported at 7 A. M. to man the wrecker to handle car retarders for the maintenance of way department in the train yard on the hump.

This job was completed and said employes were released from duty at 5:30 P. M. that day. These carmen, for their services, were compensated at their applicable hourly rates for the straight time hours and their applicable overtime hourly rates for overtime.

These employes would have repaired cars on the repair track on a piece work basis provided they had not been assigned to work in the train yard on the hump with the wrecker.

The existing agreement between the parties hereto is controlling.

POSITION OF EMPLOYES: It will be noted that the management has agreed that if these men were not sent out with the wrecking crane to handle car retarders for the maintenance of way department, they would be working piece work and receiving their average hourly earned rate which was $1.40. But as they were required to man the wrecking crane they are deprived of $.42 per hour.

This is a direct violation of Piece Work Rule 4-b first paragraph reading as follows:

It has been demonstrated above that it was the clear intent of parties hereto at the time the applicable agreement was negotiated to exempt the service herein described from piece work bonus payments of any description, and to support the employes in the instant case on the specious arguments they have presented would have the effect of arbitrarily and unilaterally revising an agreed-upon provision of long standing.

In conclusion, the carrier wishes to emphasize the fact that the service herein involved was regularly performed by members of the wrecking crew prior to and at the time the piece work agreement scope and interpretation thereto (referred to in Section 1 hereof) were agreed to by the parties hereto. No representations such as now made by the employes were presented at that time nor subsequently until the instant dispute, although the then existing practices continued to prevail without change. The Board is familiar with that part of the standard classification of work rules for each craft which reads "and all other work generally recognized as (craft's) work" and the fact that many items of work not specifically mentioned in the rule itself are by custom and practices of long standing presumed to be covered by that phrase. Surely, in light of this the employes' contention that the work herein involved is not carmen's work after that craft has been performing it so many years without protest cannot be seriously considered.

In the final analysis the employes, brushing aside established bargaining procedures, are appealing to the Board to abrogate an authorized interpretation and substitute therefor one which would force upon the carrier a method of payment which the employes themselves agreed without reservation should never be applied. This, the carrier holds, the Board is without power to do for lack of jurisdiction.

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.

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

The facts of record do not sustain the carrier's position.

Rule P. W. 4 (b) of the Addendum to the current agreement governs the method of payment in the instant case.

AWARD

Claim sustained in accordance with 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 December, 1948.