Award No. 1601

Docket No. 1499

2-Pull-EW-'52

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the carrier improperly assigned other than Pullman Company Electrical Workers to apply a generator belt to Pullman Car Glen Garry on June 18, 1951.

2. That accordingly the carrier be ordered to discontinue using other than Pullman Company Electrical Workers to perform this work and compensate Electricians E. B. Lyons and G. Holt each in the amount of two (2) hours and forty (40) minutes pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: On June 18, 1951 at about 11:30 A.M. two Cincinnati Union Terminal electrical workers were assigned to apply a belt to the 4-KW generator on Pullman Car Glen Garry.

The claimant Pullman Company electrical workers were on their assigned rest days on June 18, 1951, and were available to perform this work, if called.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the action of the carrier in the instant dispute is contrary to the provisions of the current agreement when they permitted the Cincinnati Union Terminal to assign two of their employes to apply the 4-KW generator belt to car Glen Garry, when Rule 2, first paragraph provides:

"Assignment of Work.

None but journeymen or apprentices employed as such shall perform the work outlined in Rule 5 of this Agreement."

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 were given due notice of hearing thereon.

On June 18, 1951, B. & O. train No. 3, containing Pullman car Glen Garry, arrived at Cincinnati Union Terminal two hours and 41 minutes late. At that Terminal the car's generator belt was found to be missing. Two Terminal electricians (not Company electricians) applied a new belt, and the train left after a stay of 22 minutes.

It appears also from the record that (1) some time prior to the above date the carrier had a Pullman station electrician assigned to cover the arrival of trains having Pullman cars from 7:00 A. M. to 3:30 P. M.; (2) subsequently the station assignment was discontinued as such, and the arrival of trains was and is covered by a Pullman yard electrician until 10:00 A.M., after which this electrician returns to yard duty; (3) although the carrier may well have known that B. & O. train was running late and would not arrive until after 10:00 A. M., it was not informed before the car's arrival or during its stay at Cincinnati that there was anything wrong with the car; and (4) on June 18, 1951, the yard electrician had left the station as usual at 10:00 A. M.

The carrier does not dispute that (1) under Rule 5 of the parties' agreement the work involved in the instant case properly belongs to Pullman Company electricians; and (2) under Rule 2, such electricians were entitled to perform such work on the date in question. The carrier contends, however, that (1) an emergency situation existed because the carrier, not having been forewarned about the needed repair, had no time to obtain, before the train left, the services of either its yard electricians or its off-duty electricians; and (2) therefore the carrier is guiltless of having violated the above-mentioned rules, or is at least absolved of penalty for its technical violation.

We agree in principle that there might well be certain emergency circumstances under which the carrier should properly be relieved of penalty for the sort of violation here claimed by the organization. The issue presented to us here, then, involves a decision as to whether the facts of record can properly be said to have constituted such circumstances.

We think not. It appears reasonable to believe that the carrier's officers at Cincinnati were or could have been informed of the train's lateness. If this is so, they could have had the train covered by calling in either one of their yard electricians or one of their off-duty employes shortly before the probable expected time of the train's arrival at Cincinnati. Therefore we think the situation was at least in part under the control of the carrier and of its own making. The circumstances in this case were not such as to absolve the carrier of its proper responsibilities under Rules 5 and 2.

We are left then with the problem of assessing a proper penalty for the carrier's violation of these Rules. The claim of the organization is in behalf of the two senior off-duty employes when the carrier might have called; presumably the organization asks compensation for two rather than one because two Terminal electricians were used to replace the generator belt. The claim is for two hours and forty minutes for each claimant at the time-and-one-half rate of pay, under Rule 33 on Calls.

We do not think that there is merit in allowing the claim for both employes. If the carrier had fulfilled its obligation under the agreement to use Pullman electricians on such work, it would doubtless have had a single yard electrician readied to meet the train. There is no compelling showing in the record that more than one man is needed to install a new generator belt during the time available in this case. Accordingly, we direct the carrier to compensate only the senior claimant. Because a yard Pullman electrician was not actually used, however, we allow this claimant two hours and forty minutes of work time under the Call Rule.

We think also that the pro rata rather than the overtime rate is the proper one to apply to the two hours and forty minutes. We follow the principle set forth in many previous awards of this Board that, when some employe other than a claimant has performed at a pro rata rate work properly belonging to the claimant at an overtime rate, the pro rata rate is sufficient to penalize the carrier and to make whole the claimant, who actually did not perform the work.

AWARD

Claim sustained to extent set forth in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December, 1952.