

Award No. 2065
Docket No. 1916
2-PRR-TWUOA, CIO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA, C.I.O.
RAILROAD DIVISION**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the controlling agreement was violated when the Carrier assigned a Carman Helper to the duties of Krane Car Ground Man.

2. That accordingly, the Carrier be ordered to additionally compensate W. J. Vejodich eight (8) hours each day, April 16, 17, 18, 21, 22, 23, 24 and 25, 1952, the difference between the applicable Carman Helper rate and the pro rata Carman Grade I rate on each of the aforesaid dates.

3. That the Carrier be ordered to assign Carman to perform the aforementioned work.

EMPLOYEES' STATEMENT OF FACTS: A Krane Kar was placed in operation at Mingo Junction, Car Shop, in April 1949. The carmen were instructed to handle this Krane Kar.

The position was advertised October 4, 1951 as car repairman Krane Kar—groundman. Evidence of which is submitted as employees Exhibit A.

On April 3, 1952, a position of car repairman helper was advertised for this operation. Evidence of which is submitted as Exhibit B.

This position was awarded the claimant, W. J. Vejodich.

A claim was instituted for W. J. Vejodich for the difference in rate between the applicable helper rate and the pro rata carman Grade I rate.

This dispute was processed on the property of the carrier, including the general manager, the highest officer of the carrier designated to handle disputes, and denied, evidence of which is submitted as Exhibit C.

POSITION OF EMPLOYEES: It is respectfully submitted and herein above stated in the facts and substantiated in Exhibits A, B and C, new equipment described as Krane Kar was put into operation to expedite the

clusively for an eight-hour period without combining it with higher rated work, then no question could possibly arise that the incumbent of said position would properly be compensated at the assigned laborer rate. It is submitted that the mere fact that this work was at one time an incidental part of a higher rated employe's position, does not without more, change the classification of said work. When performed as an exclusive function it carries the assigned laborer's rate—in accordance with the "Hourly Rates of Pay of Assigned Laborers" contained in the applicable agreement, as quoted above at Page 8. If coupled with work paying a higher rate, the higher rate applicable to the particular other work becomes applicable, which in this case is the car repairman helper's rate.

Applying these principles to the facts of the present case, it is clear that the instant claim is completely without merit. Carrier asserts and the employes do not deny, that the claimant was not required to perform mechanic's work. He was assigned to assist a car repairman. This entailed working under the direction and guidance of a car repairman. This, as carrier has previously shown and is undeniable, comes under the classification of car repairman helper's work. The semi-skilled "hook-on" work in question, which normally if performed as an exclusive duty would be paid for at the assigned laborer rate, is merely another phase of the work which carman helpers can be required to perform as a part of their primary duties of helping a car repairman. The carrier submits, therefore, that the claimant was properly compensated at the helper rate, and that he was not entitled to the Grade I mechanic rate as claimed.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretations or applications of Agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim in this case would require the Board to disregard the agreement between the parties and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the "hooking-on" work here performed was incidental to the claimant's regular assigned duties as car repairman helper; that he was properly compensated the helper's rate for his entire tour; and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the employes in this matter.

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.

A new position of "Car Helper Krane Kar," Mingo Junction Car Shop, first trick, Monday through Friday, rest days Saturday and Sunday, with advertised duties "Help repair freight cars—Hooker on Krane Kar" was bulletined on Advertisement No. 14, dated April 3, 1952, and claimant was the successful applicant for this position effective April 15, 1952.

The duties of hooker on Krane Kar were formerly performed **incident with** his regular assigned duties by the incumbent of **car repairman position** which was first established and bulletined on Advertisement No. 36 dated October 4, 1951, as "Car Repairman Krane Kar—Groundman," Mingo Junction Car Shop, first trick, Monday through Friday, rest days Saturday and Sunday, and advertised duties "Direct Krane Kar and repair freight cars."

The equipment in question was first used at Mingo Junction in April, 1949. Until October of 1951, there was not a sufficient amount of work involving Krane Kar to justify making an assignment of an operator and an assignment of a groundman or hooker on. The work was usually performed by car repairmen as incidental work with their regularly assigned duties.

It is our opinion that the nature of the hooker on or groundman work is incidental to the work of either a car repairman or a helper. The Krane Kar is used for moving heavy parts. Whether or not this job should have been bulletined for a car repairman is dependent upon the nature of the work required of the individual employe in addition to handling the hooker on work. There is nothing in the record to indicate to this Board that the claimant did, in fact, perform any work of a car repairman.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February, 1956.

DISSENT OF LABOR MEMBERS TO AWARD 2065

When the Krane Kar first came into use on the railroad, the railroad unilaterally established a grade one carman rate for this work, and by bulletin continued a position of grade one carman to work as a ground man on this work. Having voluntarily rated the job as work belonging to grade one carman, under regulation 1-A-4 of the current agreement, the carrier had no right to change the rate on this job to that of carman helper without negotiation with the organization, who is the statutory representative. In view of the foregoing a denial award is unjustified.

George Wright
Edward W. Wiesner
Charles E. Goodlin
R. W. Blake
T. E. Losey