Award No. 4357

Docket No. 3893

2-LV-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier improperly assigned Trainmen on Sunday, November 15, 1959 to perform the work of Carmen in making inspection and air test on L&NE 8371 before car left Stockertown, Pa.

2. That accordingly the Carrier be ordered to compensate Car Inspector Clyde G. Carpenter in the amount of a four (4) hours-call for November 15, 1959.

EMPLOYES' STATEMENT OF FACTS: Prior to August 14, 1959, carmen were employed seven days a week on the 5:00 P. M. to 1:00 A. M. shift at Stockertown, Pa., on a branch line serving industries and interchange with the LNE and DL&W Railroads, to make the inspection, air test, etc. on all cars moved from industrial plants and cars received through interchange. One regular five (5) day position and two (2) days in relief position.

Effective August 14, 1959 carrier re-arranged carman position at Stockertown, Pa. to six (6) day position, one regular five (5) day position, one (1) day in relief position. Sunday, position not being covered by carman.

Sunday, November 15, 1959 train of fifty cars left Easton, Pa. for Stockertown, Pa., and after arrival delivered all cars at various industrial plants and interchange.

On the return trip from Stockertown, Pa. to Easton, Pa., train was composed of one (1) car, L&NE 8371, picked up at Stockertown, Pa.

No carman now assigned on Sunday and the work that was normally performed by carman seven (7) days a week prior to August 14, 1959 was performed by Trainman on November 15, 1959 in making up train consisting of L&NE 8371 and making proper inspection and air test thereto.

all of the investigative work incident to answering the claim and the Division to perform all of the investigative work incident to its adjudication and beyond that to compute a sum out of thin air that it believes the employes would be entitled to as compensatory damages.

On procedural grounds alone it respectfully is requested that the claim of the employes be dismissed.

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.

Stockertown, Pennsylvania, is an interchange point among the Carrier, the Lehigh and New England Railroad, and the Delaware, Lackawanna and Western Railroad. It is also a point serving various industries. Prior to August 14, 1959, the Carrier employed carmen seven days a week on the 5:00 P. M. to 1:00 A. M. shift at Stockertown. Effective as of said date, the Carrier changed the seven-day operation to a six-day operation with no carmen on duty on Sundays.

On Sunday, November 15, 1959, a train from Easton, Pennsylvania arrived at Stockertown and delivered all of its cars at various industrial plants and interchange. On its return trip, the engine picked up car L&NE 8371 at Stockertown and delivered it at Easton. The trainmen made proper air tests and inspections as required by law.

The Claimant C. G. Carpenter has been employed by the Carrier as a carman at Stockertown. He filed the instance grievance in which he contended that the Carrier improperly assigned trainmen to perform the above indicated air tests and inspections on car L&NE 8371 and that he should have been called to perform said work. He requested compensation in the amount of four hours at the pro rata rate. The Carrier denied the grievance.

1. The Carrier's defense rests on procedural grounds. It asserts that the claim before us is not the same as the one processed on the property and that we are accordingly foreclosed from considering the merits of the claim. We disagree. The record shows that General Chairman A. U. Koch fully described the facts underlying the instant grievance in a letter, dated November 27, 1959, as well as in a letter, dated January 15, 1960 (see: Organization's Exhibits 1 and 2). Both letters were submitted to the Carrier during the processing of the instant claim on the property.

The facts stated in Koch's letters are substantially the same as those stated in the Organization's submission brief. The only material difference is that Koch asked for eight hours' pay at the rate of time and one-half in his letters whereas the Claimant now requests four hours' pay at the pro rata rate. It is self-evident that this deviation is not a change in the nature or substance of the claim but only in the extent of the relief sought which, incidentally, is in the Carrier's favor. It follows that its procedural objection lacks merit. See: Award 1937 of the Second Division.

2. In support of his claim, the Claimant mainly relies on Rule 121 of the applicable agreement. This Rule contains a detailed description of carmen's work. It also contains a comprehensive provision that all work not specifically enumerated but generally recognized as carmen's work shall constitute carmen's work. The Claimant's contention that, prior to August 14, 1959, carmen generally performed work of the type here involved seven days a week has not been disputed by the Carrier. As a result, we hold that such work constituted work generally recognized as carmen's work within the purview of Rule 121 and thus belonged to the carmen's craft. We are of the opinion that the Carrier could not unilaterally convert the seven-day assignment into a six-day assignment and assign performance on the seventh day to employes other than carmen. See: Award 1487 of the Second Division.

In summary, we hold that, on the basis of the specific facts underlying this case and of the evidence submitted by the parties, the claimant was entitled to the work here in dispute and should have been called to perform it. His claim for four hours' pay at the pro rata rate is justified in accordance with Rule 8(4) of the labor agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1963.