

Award No. 5200
Docket No. 4891
2-NOPB-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NEW ORLEANS PUBLIC BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned other than carmen to perform carmen's work on Burro Crane on January 8, 1964, and

2. That accordingly the Carrier be ordered to additionally compensate Carman W. J. Reuther for four (4) hours at time and one-half rate for said violation.

EMPLOYEES' STATEMENT OF FACTS: The New Orleans Public Belt Railroad Company, hereinafter referred to as the Carrier, maintains a force of carmen who are assigned to positions covering Carrier's operation twenty four (24) hours per day, seven (7) days per week, at a number of locations in the shops and yards at New Orleans, Louisiana.

Carrier's carmen employes are covered by one seniority roster as evidenced by Exhibit A attached. Carman W. J. Reuther, hereinafter referred to as the claimant, is listed on the seniority roster and was available and willing to perform the work subject to dispute.

For many years prior to October 5, 1959, carmen were assigned to the Engine House. On that date Carrier abolished the last of the carman positions assigned at the Engine House and from that time to the present Carrier uses carmen assigned at other locations within the seniority point to perform the carmen's work at the Engine House. Carmen are employed around the clock two blocks from the Engine House.

On January 21, 1964, Machinists T. Miestchovich and R. R. Dambrino were used to replace defective front coupler in Burro Crane No. 3. Claim was timely filed and properly handled with Officers of the Carrier up to and including the highest designated Officer, all of whom have declined to adjust it.

VII, Carrier's Proposal No. 23, of the National Agreement dated August 21, 1954, adopted on this property by Agreement dated September 12, 1955, which reads as follows:

"At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points, will so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

Similar claims have been declined on this property and since they were not progressed, it must be assumed that Carrier's position was correct.

Attached are Exhibits A, B, C, D, E, F, G, H, and I, which cover complete correspondence regarding this claim.

POSITION OF CARRIER: This claim is based on the use of employes of other crafts to perform carmen's work at our Machine Shop. There is not sufficient work to justify employing a carman at Carrier's Machine Shop; therefore, Carrier assigned two machinists to perform the work in question.

The Organization has admitted that the four hours' overtime claimed is only their estimate of time required to make the repairs. Even if this claim was valid, which Carrier does not concede, it should not be for payment at the overtime rate.

The fact that there is insufficient work to justify employing a carman at this point has not been disputed by the Organization.

Carrier takes the position that Article VII, Carrier's Proposal No. 23 of Agreement dated August 21, 1954, is controlling in this case and respectfully request your Honorable Board to decline this claim.

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.

Claim of employes that:

- (1) Under the current agreement the Carriers improperly assigned other than carmen to perform carmen's work on Burro Crane on January 8, 1964, and
- (2) That accordingly the Carrier be ordered to additionally compensate W. J. Reuther for four hours at time and a half rate for said violation.

In accordance with the agreement and the facts set forth in the record, the Carriers did employ a carpenter in its machine shop prior to October 5,

1959. This carpenter was carried on the carmen's seniority roster; and on October 5, 1959, the Carrier abolished this assignment as there was not sufficient work to employ a carpenter at this location.

No carman at the time involved was employed at this location to do the work. Therefore, the carpenter could do the work that was previously done by a carman when a carman was not present.

Accordingly, there was no violation of the Agreement nor of the facts as presented.

The claim of the carmen is, therefore, denied, and W. J. Reuther is not entitled to be compensated for four hours at time and a half rate.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5196

The second paragraph of the Employes' Statement of Facts reads as follows:

"When the Carrier elected to work the Coal Hump overtime, instead of putting on a third shift, it was agreed upon locally, when the Hump worked in excess of two and one-half (2½) hours the pit inspectors would be called from the Carmen's Overtime Board. In Carrier's Master Mechanic L. S. Fidler's letter of May 4, 1964, addressed to Local Chairman G. C. Watkins he states, 'There was no such understanding or agreement between the Local Chairman and the General Foreman at Russell Terminal.' However, he did admit it had been the past practice to call men from the Carmen's Overtime Board when the Hump worked in excess of two and one-half (2½) hours."

On reading the Employes' Statement of Facts quoted above it will be noted that it was the carrier who denied that there was any such an agreement. In the findings of the majority quoted below they say it was the Organization that denied there was any such practice; that there was such an understanding.

"According to past practice, in calling men from the Carmen's Overtime Board when the hump worked in excess of 2½ hours, which practice the Organization at first denied but later stated that there was such an understanding * * *."

The seventh paragraph of the Carrier's Position reads as follows:

"In denying this claim * * *, the initial officer denied that any such agreement had been made with the Organization as to the manner in which Carmen would be worked on an overtime basis on the local hump and set forth the practice which had been followed * * *."

It will be noted from the quote above from the Carrier's Position that the initial officer denied there was any such agreement that had been made with the Organization. It will be noted from the quote below from the findings of the majority they say the Organization denied that there was such an agreement.

"The Organization denied that there was such an agreement but it admitted there had been a past practice to call men from the Carmen's Overtime Board when the hump worked in excess of two and one-half hours * * *."

The twelfth paragraph of the Carrier's Statement of Facts reads as follows:

"The humping operation resumed and continued without further interruption. However, the trouble with unit 5547 had caused a delay of more than an hour, resulting in the inspector remaining on duty for 2 hours and 55 minutes beyond the close of second shift * * *."

It will be noted in the quote above from the Carrier's Statement of Facts they admitted the inspector worked 2 hours and 55 minutes beyond the close of second shift. It will be noted in the quote below from the findings of the majority they say the inspector stayed on until 11:00 P. M., his quitting time and left; then state that the carrier did not violate the agreement by not assigning overtime work which was not needed.

"The reason the carman was not worked the 2½ hours was due to the fact that at midnight trouble developed on the locomotive unit. Mechanics were called in to see if they could repair the unit; but they could not do so. Therefore, the inspector only stayed on until 11:00 P. M. his quitting time and left. Accordingly the Carrier did not violate the agreement by not assigning overtime work which was not needed."

The foregoing shows the discrepancies indulged in by the majority in arriving at their conclusions in Award 5196. We, the Labor Members, dissent.

The same confused and extravagant findings are used to deny Awards 5193, 5194, 5197, 5198, 5199 and 5200 and we therefore likewise dissent to these awards.

Oren Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger

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