



Award No. 5702

Docket No. 5483

2-B&M-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, AFL - CIO
(CARMEN)**

BOSTON & MAINE CORPORATION

DISPUTE: CLAIM OF EMPLOYES:

1. That the Boston and Maine Corporation violated the controlling agreement, when on March 21, 22, 23 & 24, 1966, it sent two carmen from Billerica, Massachusetts shop to make repairs to damaged cars at Fitchburg, Massachusetts repair track.
2. That the Boston and Maine Corporation be ordered to compensate Fitchburg, Massachusetts Carmen H. P. Summers and J. H. LaRoche eight (8) hours each at the time and one-half rate for each day of said violation; namely March 21, 22, 23 and 24, 1966.

EMPLOYES' STATEMENT OF FACTS: The Boston and Maine Corporation, hereinafter referred to as the Carrier, maintains a car repair point at Fitchburg, Massachusetts. The Carrier employs carmen at that point, among whom were H. P. Summers and J. H. LaRoche, hereinafter referred to as the claimants, to perform car repair work.

Claimant H. P. Summers had an assigned work week of Monday through Friday, 4 P.M. to 12 A.M., with Saturday and Sunday as regularly assigned rest days.

Claimant J. H. LaRoche held a regular relief position with an assigned work week of Thursday through Monday, with assigned hours of— Thursday, 12 A.M. to 8 A.M.; Friday, 12 A.M. to 8 A.M.; Saturday, 8 A.M. to 4 P.M.; Sunday, 8 A.M. to 4 P.M. and Monday, 4 P.M. to 12 A.M., with regularly assigned rest days of Tuesday and Wednesday.

On or about March 16, 1966, thirteen (13) cars were derailed in the Fitchburg, Massachusetts yard. The derailment was cleaned up and the damaged cars left at Fitchburg.

On March 21, 22, 23 and 24, 1966, the Carrier chose to send a foreman and two (2) carmen from its Billerica, Mass. Shop, some fifty (50)

claim. This was similarly ruled by Referee A. Langley Coffey in the last paragraph of his opinion in Third Division Award No. 6953, wherein he stated:

"Claim (3) will be denied. The violation, under facts and circumstances of record, appearing to be one of working employes under the same contract out of classification, rather than a clear invasion of another's work domain, we see no need to look beyond the composite service rule in the Agreement for a remedy. Actual overtime not being involved, and there being nothing of record on which to base a finding that the extra gang was worked in place of regular section gang to avoid overtime, Rule 26(g) is not applicable to the facts in dispute."

Therefore, it is requested that this claim be denied accordingly.

(Exhibits not reproduced.)

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.

Petitioner contends that Carrier violated applicable provisions of the controlling Agreement when two carmen from its Billerica, Massachusetts Shop were used to repair damaged cars at Fitchburg, Massachusetts where Carrier also employs other carmen, who were available to perform the disputed work.

Carrier urges that claimants did not have an exclusive right to the disputed work, and that the controlling Agreement does not prohibit Carrier from assigning the work to car repairmen, who normally would have repaired the cars if such work had been performed at the Carrier's car shop in Billerica, Massachusetts.

Rule 25 of the controlling Agreement in part provides as follows:

"Rule 25. Seniority of employees in each craft covered by this agreement shall be confined to the point or district employed in each of the following departments: x x x"

It is undisputed that Billerica and Fitchburg, Massachusetts are each separate and distinct seniority points at which Carmen are regularly employed. There is no evidence that an emergency situation existed even though the wrecked cars could not be moved by Carrier to Billerica, Massachusetts as work on wrecked cars is performed when necessary at both seniority points. Furthermore, the record reveals that Claimants were available to perform the disputed work on the dates of claim.

In view of the foregoing, we must conclude that Carrier violated the clear and unambiguous language of the applicable agreement.

Accordingly, we find that claimants were entitled to perform the work in dispute. We will sustain the claim at the pro rata rate, but not the overtime rate in accordance with numerous Awards of this Division. (Award Nos. 5299, 5023, 4910, 4864 and others.)

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.