



Award No. 5841

Docket No. 5717

2-SLSF-CM- '70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Carmen)**

ST. LOUIS — SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Car Inspector L. P. Borroni, Memphis, Tennessee was not compensated by the provisions of the undisputed Letter of Understanding dated October 25, 1946 made between System Federation No. 22 and the Carrier to set up and operate separate overtime boards. This understanding was in effect on April 20, 1967 and continues henceforth.
2. That accordingly, the Carrier be ordered to compensate said Car Inspector in the amount of 8 hours at time and one-half his pro rata rate.

EMPLOYEE'S STATEMENT OF FACTS: The St. Louis-San Francisco Railway Company is hereafter referred to as the carrier, and Car Inspector L. P. Borroni is hereafter referred to as the claimant.

On April 19, 1967, it was known by the carrier that some wrecked cars would have to be loaded on other cars for shipment, and that these cars would require the service of the derrick, consisting of engineer and four ground crew carmen for the hooking and unhooking operation of loading. At Memphis, Tennessee, as at many other points, the wrecking crew is made up of carmen from the train yards, repair tracks and heavy shops. The carrier, knowing that five men would be needed to perform the loading operation of the wrecked equipment, notified two rip track overtime board carmen to report for duty on the rip track on the following morning of April 20, 1967 to replace the five vacancies. On April 20, 1967, a regularly assigned rip track carman was sent to the train yard to replace Car Inspector A. T. Dold who was the derrick engineer. This made a total of five men required to perform the services of the wrecking crew. These men were replaced by two men from the rip track overtime board.

The letter of understanding has been in effect since November 1, 1946 without dispute by either party. This letter of understanding reads as follows with the emphasis of paragraphs 6 and 7 for the purpose of clarity and convenience:

tablished by this and other divisions of the board is to allow straight time rate where no service is performed (see Second Division Award 5548 — Referee Murphy).

On the basis of the record and all of the evidence, this division is respectfully requested to find and to hold that the carrier did not violate the agreement and to deny the claim in its entirety.

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.

Carrier has a humpyard and mechanical facilities Tennessee Yard which is the situs of the alleged agreement violation.

For the loading of some wrecked cars on other cars on April 20, 1967, Carrier assigned, from its wrecking crew, a derrick operator whose regular assignment was Car Inspector (train yard position) and four Carmen from the regular track. For the period of absence of the wrecking crew — one day — Carrier called two Carmen from the repair track overtime board to work on the repair track and a regularly assigned repair track Carmen was transferred to work as a Car Inspector. The claim is that the need for a Car Inspector should have been filled from the train yard overtime board; and, Carrier's failure to do so violated an agreement between the parties evidenced by a letter dated October 25, 1946, over the signature of Carrier's Superintendent of Motive Power to the Master Mechanics and Shop Superintendent that reads:

"The Federated Shop Crafts Committee has been handling with me for sometime the matter of establishing uniform overtime boards and the operation thereof for the system among the Shop Crafts employes. At conference with the Federated Shop Crafts Committee today, we have agreed to handle the question as follows:

1. In order to determine what employes desire to participate in overtime work, it is suggested that the employes in each craft and at each point be canvassed for that purpose, and those desiring participation will sign a written application so stating.

2. Rotating overtime boards will be established and the names of employes desiring participation shall be placed thereon in line with their seniority. The name first out upon being called and working or refusing the call will be removed from the top of the list and placed at the bottom thereof, and so on throughout the life of the board.

3. Employes once having designated their desire to participate will be expected to protect the service by answering their calls in turn. An employe refusing two overtime calls in succession, except in case of illness, when called in his turn shall have his name removed from the overtime board for a period of sixty (60) days and must thereafter make application for restoration.

4. Employees not participating in the overtime board may have their names placed thereon upon written notice to their local foreman, with copy to the chairman of the local committee, and such names will be initially placed at the bottom of the list. Employees desiring to cease participation in the overtime board shall have their names removed from the board upon written notice to their foreman and the local committee.

5. Employees regularly assigned to work seven (7) days per week will not be permitted to fill Sunday or holidays jobs outside of their regular hours until all six (6) day assigned employees have been called.

6. An employe filling temporary vacancy assigned to seven (7) days per week will be entitled to work the full assignment of the vacancy being filled.

At each point a member of the local committee will be designated to handle the overtime board for their respective crafts. The boards will be located at the most desirable point, and whatever protection is necessary will be provided to avoid molestation, either through glass cover or other desirable means.

7. Separate board should be maintained for roundhouses and machine shops. Deviation from this paragraph may be made at respective points as consistent with local conditions and by mutual agreement of the local committee and local management.

Overtime boards for carmen craft will be handled at each point to meet local conditions by mutual agreement between local committee and local management.

Will you please so instruct all of your supervision and place this arrangement in effect as of November 1, 1946. Please acknowledge receipt."

From our study of the record we find: (1) the letter of October 25, 1946, memorializes an agreement; (2) Carrier admits separate rotating overtime boards for repair track and train yard Carmen at Tennessee Yard had been established and were in being on April 20, 1967 — all in compliance with the October 25, 1946 agreement.

Carrier argues its action herein complained of did not violate the Schedule Agreement, effective January 1, 1945, and it specifically cites: General Rules 11 — Distribution of Overtime and 30 — Seniority; and, Carmen's Specific Rules 114—Qualifications and 115—Classification of Work. We agree that under those Rules Carmen have common seniority at the point employed and are contractually qualified to perform Carmen's work on both the repair track and in the yard. But, Rule 11 was implemented by the October 25 agreement; and, the other cited Rules to the extent of application of that agreement were qualified. The October 25, 1946 agreement having been executed subsequent to the Schedule Agreement (January 1, 1945) prevails to the extent of its provisions.

The issue narrows as to whether Carrier violated the October 25 agreement when it called two Carmen from the repair track overtime board to work on the repair track and transferred a regularly assigned repair track Carman to the train yard.

In its Rebuttal Submission Carrier states: "Two carmen were called from the repair track overtime board to assist the remaining repair track force not engaged in the loading operation." (emphasis supplied.) This statement is refuted by the facts. The remaining repair track force included the Carman who was assigned to the yard. Thus it is seen that the remaining track force needed to be implemented by only one Carman and the yard force needed to be implemented by one Carman. Carrier demonstrated that its source of manpower for these requirements was the overtime boards. It is the sense of the October 25 agreement that under such circumstances Carrier was contractually required to call a carman from the repair track overtime board to implement the repair track force remaining after assignments from that force to the wrecking service; and, to call one Carman from the train yard overtime board to fill the need of additional manpower in the train yard in the absence of the Car Inspector while he was assigned to the wrecking service. We will sustain the Claim on its merits.

Relative to paragraph 2 of the Claim, Carrier argues that even if the Claim be found meritorious compensation should be held to be at the straight time rate of pay. The make whole theory, firmly established in labor law, compels us to sustain paragraph 2.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1970.