



Award No. 5893

Docket No. 5618

2-GN-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 101,
RAILWAY EMPLOYEES' DEPARTMENT, A.F.L.-C.I.O.
(CARMEN)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: Claim of Employes:

1. That Carrier improperly used an employee not of the carmen's craft to perform carmen's work on June 19, 20, 21, 1966.
2. That accordingly, the Carrier be ordered to compensate Carman Harold Street in the amount of 20 and 1/3 hours account of said violation.

EMPLOYES STATEMENT OF FACT: Carman Harold Street, hereinafter referred to as the claimant is employed in his respective craft and class by the Great Northern Railway Company, hereinafter referred to as the carrier, in its mechanical department at Whitefish, Montana. Claimant holds a regularly assigned position as "Wrecker Engineer".

On June 6, 1966, the carrier sent derrick X-1745 to its Hillyard Shop, a distance of 274 miles, from Whitefish for repairs. The claimant was sent to direct needed repairs to the derrick but was recalled to Whitefish on June 8, 1966 before repairs were completed.

On June 19, 1966, the supervision at Whitefish received word from Hillyard that the repairs would be completed in a day or two. The car foreman then sent Assistant Car Foreman Stolte to Hillyard who directed the remaining repairs on June 20, 1966 and returned with the derrick to Whitefish.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the issue in dispute between the parties is whether or not the claimant is entitled to be compensated for work performed by the assistant car foreman.

It is further submitted that the carrier violated the explicit provisions of article V of the August 21, 1954 agreement reading:

3. The organization has failed to carry its burden of proving that the claimant derrick engineer had any contractual right, must less the exclusive contractual right, to perform the work here in question.

4. The organization has failed to show that rule 42(a) or article III of the September 25, 1964 agreement and rule 42(f) prohibited the carrier from assigning the supervisory service involved herein to Whitefish Assistant Car Foreman O. Stolte.

5. Observing a derrick being checked out, inspecting the repairs that have been made to a derrick, and service as a "Road Supervisor" does not fall within the confines of rule 42(a) or article III of the September 25, 1964 agreement, rule 42(f), or any other collective bargaining rule or provision now in existence on this property.

For the foregoing reasons, the carrier respectfully requests that the claim of the employees be denied.

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.

Implicit in the wording of Car Foreman Montgomery's declination of claimant's time slip on June 23, 1966, is the understanding that the claim was being turned down for the reason that Assistant Foreman Stolte did not engage in any activity that went beyond his exclusive supervisory functions. That explanation sufficed for purposes of Article V of the August 21, 1954 Agreement. The contention that Carrier violated said provision is untenable, and must be rejected.

As to the merits, the evidence shows that claimant was dispatched to the Hillyard Shops at Spokane, Washington, for the specific purpose of directing the making of repairs on Derrick X-1745. It is plainly evident that he did accomplish that mission prior to his return to Whitefish. Thus, Rule 42(f) was strictly adhered to.

Neither does rule 42(f) refer to any requirement that the operator of roadway equipment accompany the machine to and from the repair shop facility, nor does claimant request penalty pay for time spent by Traveling Engineer Garrity in accompanying Derrick X-1745 on its initial movement from Whitefish to Spokane. Patently, the service rendered by Assistant Foreman Stolte in the capacity of road supervisor on the return of the derrick to Whitefish, is similarly above suspicion or reproach.

Not only does claimant refrain from suggesting that he should have remained at the Hillyard Shops for the period of time required to complete the repairs on the derrick, but also the proof reveals that it was the Hillyard Shop employees, and not Assistant Foreman Stolte, who inspected the derrick on completion of the job, and checked it out. Accordingly, it must be concluded that the record in this case does not establish a violation of Article III, of the September 25, 1964 Agreement.

A W A R D

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 17th day of April, 1970.