

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern Inc. violated Rule 27(a) and 83 of the current agreement when they used other than carmen to perform carmen's work on May 20, 1975.
2. That accordingly the Burlington Northern Inc. be ordered to additionally compensate Carman V. Benysek, Daytons Bluff, Minnesota, for eight (8) hours at the time and one-half rate on May 20, 1975.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This matter involves operation of a motor track car by an Assistant Car Foreman, under the following circumstances set forth by the Organization and not contested by the Carrier: A five-man crew was working two men short; one of the positions was blanked; the Assistant Car Foreman operated the motor track car; the car in question had only that week been placed in service at this location and, up to the instance in question, was operated by a Carman (leadman), who had been trained for this work the previous week.

In sum, the Organization claims that the foreman performed Carmen's work in that, had the crew consisted of five men, operation of the track motor car would have been assigned to the Carman (leadman) as it had on previous days.

The basis of the Carrier's position is not to dispute these particular facts but to deny that the work classification rules applicable here (Rule 27(a) and Rule 83) specifically assign the work in question to Carmen.

The Carmen do not claim that operation of the track motor car is exclusively theirs, admitting that other crafts use the vehicle in connection with their own work. But the Organization claims that in this instance the work involved was Carmen's work, both by assignment from the Carmen and under the Rule 27(a) inclusive phrase covering "all other work generally recognized as carmen's work."

This is not a case of jurisdictional dispute between crafts, where matters of exclusivity and/or precise definition within work classification rules is of great significance. Nor is the operation of this track motor car at another location of binding importance. What is most relevant is that the record shows that the foreman operated the car on the date in question at a time when two Carmen had laid off. Left unchallenged is the evidence that a Carman (leadman) was trained for this work and operated the car on previous days. Surely the movement of the car cannot be found to be unrelated to Carmen's work; and in the brief period of its operation it was "generally recognized" as Carmen's work. No showing was made of the operation of the car by the foreman at this location except on the day in question.

The Carrier notes that the Organization filed a Section 6 notice referring specifically to operation of vehicles used to transport Carmen. The Carrier claims that the Organization, failing to obtain the new Section 6 provisions, does not now have such work under its work classification rule. In view of the Organization's savings clause accompanying its Section 6 work rule request, the Board finds that the Organization has made no such admission.

Limited to the specific circumstances here involved, the Board finds that the Organization's claim has merit. As to remedy, the time-and-one-half rate is inappropriate. As stated in Award No. 6359 referring to other earlier awards:

"It is firmly established that the pro rata rate is the proper rate of compensation for work not performed; the overtime rate is applicable only to time actually worked, the pro rata rate is the measure of value of work lost."

A W A R D

Claim No. 1 is sustained.

Claim No. 2 is sustained but at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of September, 1977.