

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

Parties to Dispute: { System Federation No. 2, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 5 and 117 of the controlling Agreement, April 8, 1977, when they assigned a Mr. George Doaks to repair freight cars TTX 473651 and TTX 102720 at the piggy back track in Settegast Train Yard at Houston, Texas.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman A. G. Soto for eight (8) hours at the punitive rate for their violation of April 8, 1977.

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 waived right of appearance at hearing thereon.

Claimant was a Carman assigned to Carrier's Settegast Train Yard in Houston, Texas. On April 8, 1977, it being a holiday, Good Friday, Claimant's position was blanked. On that day, April 8th, a Truck Driver employed by the Missouri Pacific Trucking Company installed plates on two cars. That individual indicated in his statement that the work would appear on his time sheet. The piggy back track was located adjacent to the train yard and Claimant was regularly assigned to repair piggy back cars during his normal work week.

Petitioner argues that the assignment of an employee not covered by the Carmen's Agreement to the work in question was a prima facie violation of Rule 117, the Classification of Work Rule, which provides, in pertinent part:

"Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, ... inspecting of all passenger and freight cars, both wood and steel ... and in all other work generally recognized as carmen's work."

It is urged that had the work occurred during the regular work week Claimant would have performed the necessary task and hence the work on the holiday should have been assigned to him. Petitioner states that work performed by the craft on a regular basis cannot be removed from the craft on holidays.

Carrier argues that the work in question, installing missing plates, may properly be required of truck drivers incidental to the performance of their duties. Further, it is stated that no repairs were made which were contracted to the Carmen's craft. In addition, Carrier argues that the Claim is inflated since only two hours and fifteen minutes at most were consumed by the truck driver in performing the work in question. Carrier also points out that the work came under the jurisdiction of the shipper and it had no record of the work in its mechanical department.

With respect to the nature of the work, in our judgment it was maintenance work covered by Rule 117 (see Award No. 7621). Essentially, Carrier's argument boils down to the allegation that it did not have control of the work which was assigned to the Truck Driver by the shipping company and hence the work was performed voluntarily by the shipper. The argument is not persuasive because the identical work was regularly performed by Carrier personnel during the regular work week and Carrier was aware that the type of repair activity was required. Furthermore, Carrier could easily have established from the records of its subsidiary company whether or not the work was indeed performed by the driver. It also must be emphasized that the record establishes the fact that the work in question was performed on Carrier's piggy-back ramp, even though this aspect of the dispute is not determinative. The key is the fact that this was work covered by the Agreement and normally performed by Carmen during the regular work week.

With respect to the remedy, it must be noted that the work only took something less than $2\frac{1}{2}$ hours. Hence, rather than eight hours pay, a call (four hours) at pro rata rate for the holiday would appear to be more appropriate (Award 2273).

A W A R D

Claim sustained; Carman Soto will receive four hours pay at time and one half.

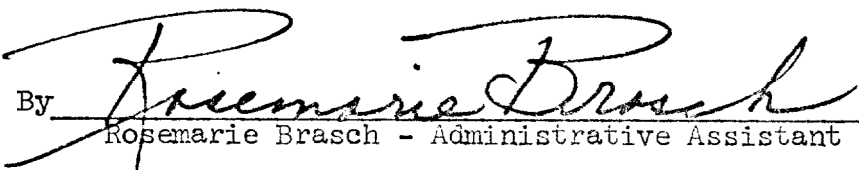
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Award No. 8094
Docket No. 7862
2-MP-CM-'79

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of September, 1979.