

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12887
Docket No. 12613
95-2-92-2-150

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(Brotherhood of Railway Carmen,
(A Division of TCIU
PARTIES TO THE DISPUTE: (
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

- "1. That the Norfolk Southern Railroad Company and/or its Corporate Parent the Norfolk Southern Corporation violated the terms and conditions of the current Agreement on August 14 and 15, 1991 when work belonging to the Carmen's Craft was assigned to an employee other than a Carman at Danville, Kentucky instead of calling in Carman M. W. Simpson on overtime.
2. That accordingly, the Norfolk Southern Railroad Company and/or its Parent, the Norfolk Southern Corporation, now be ordered to provide the following relief to Carman M. W. Simpson: That he now be paid eight (8) hours at the rate of time and one half for August 14, 1991 and eight (8) hours at the double time rate for August 15, 1991."

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 of hearing thereon.

The Organization has filed a claim alleging that a Carrier officer performed work on August 14 and 15, 1991, that contractually belonged to Carmen in violation of Rule 132, Carmen's Classification of Work.

It appears from the record that a Carrier officer did, indeed, perform some work that is normally considered to belong to Carmen. While it further appears that the officer, a relief foreman, was only attempting to be helpful without intending to violate the contract, prior cases of the Division have ruled that a foreman may not properly perform work that is beyond the scope of normal supervisory duties and functions.

The only question is whether Claimant should be compensated at the time and one-half rate for August 14 and the double time rate for August 15, 1991. The Organization contends that Claimant should be compensated at the above rates because that is the payment he would have received if he had worked. Conversely, Carrier maintains that since Claimant actually performed no work, he would not be entitled to compensation at more than the pro rata rate. This Division and other divisions of the Adjustment Board have held in a majority of Awards that there is no basis for payment at the overtime rate of pay for time not actually worked. Claimant is accordingly awarded compensation at the pro rata rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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By Order of Second Division

Dated at Chicago, Illinois, this 5th day of June 1995.