

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13895
Docket No. 13781
06-2-05-2-35

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen Division of Transportation
(Communications International Union, AFL-CIO

PARTIES TO DISPUTE: (

(The Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rules 2, 29.2 and 30.1, when they failed to send Carman Archie Sears to re-rail cars in Portland, ME on June 25, 2004.
2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Archie Sears in the amount of eight (8) hours at the straight-time rate for allowing a Machinist to perform the required re-railing of two (2) cars.”

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 case involves a derailment and the alleged failure of the Carrier to send a Carman, Archie Sears, to re-rail cars in Portland, ME on June 25, 2004.

The Organization's position is that, as a result of this derailment, only one Carman was sent to the site who was assisted by a Machinist. This is a violation of Rule 2 (See Employees' Exhibit G, Page 1, Rule 2, 2.1(m)) of the Agreement between the Parties which states that Carmen are to do re-railing on this property. The Carrier claimed that, if the Machinist was not available, then only one Carman would have performed this work. There was no showing in the record that the Carrier informed the Local Committee. The Carrier further stated that this is light work and the Machinist assisted but not out of necessity. The facts are that the Carman was not working alone. He was working with the assistance of an individual from another craft. The Carrier has an obligation under these circumstances to pay an additional Carman for the work not assigned. Therefore, the claim should be sustained.

The Carrier argued there was no violation of the Agreement since this was a routine re-railing of two freight cars. Only one Carman was needed to perform this work. The Machinist may have provided some assistance to the Carman but not out of necessity. Cars could just as well have been re-railed using a single Carman under the direction of the Manager. The Organization argued that the Machinists know nothing about re-railing, therefore, the assistance provided by the Machinist was minimal and inconsequential. Even if a second Carman had been necessary, the Claimant would not have been the one called.

Upon review of the evidence the Board finds that there is not enough evidence in the file as to whether or not exclusivity exists regarding the Carman craft and the re-railing process. However, it is clear from the record that the Machinist did provide assistance to the Carman in the performance of work not generally part of his craft. The arguments of the Carrier regarding the de minimus aspect are not persuasive and, therefore, the Board will award Claimant a call without precedent based only on the unique record of this case.

Claim sustained in accordance with the Findings.

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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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of April 2006.