

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13915
Docket No. 13796
07-2-06-2-10

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railway Carmen Division of TCU**
(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 when they arbitrarily allowed Supervisor Carves to perform re-railing work in Rigby Yard on February 22, 2005.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Timothy Crousanas eight(8) hours at the rate of time and one-half for Supervisor's performing re-railing work at Rigby Yard."**

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.

It is not disputed that on February 23, 2005, Carman Nickless was assigned to re-rail two freight cars. Nickless re-railed one of the cars and was subsequently

assisted in the re-railing of the second car by his Supervisor which took 30 to 45 minutes.

It is the Organization's position that the Carrier failed to call the Claimant in on overtime to assist in the re-railing of two box cars in Rigby Yard. Instead of calling Claimant to perform this service the Supervisor chose to assist Carman Nickless in re-railing one of the cars. The fact that the Supervisor assisted the Carman is proof that he should have called in another Carman, which he did not do.

It is the position of the Carrier that Carman Nickless performed the re-railing of each of the two cars. The first car was re-railed before the Supervisor arrived and the second car was also rerailed by Nickless with the Supervisor providing incidental assistance of placing blocking down. According to the Carrier, Nickless could have easily put this blocking in place for himself and thus, it was not necessary for it call in another Carman to perform this task. The fact that the Supervisor provided some minimal assistance instead of letting Nickless perform the task alone was not a violation of the Agreement as it is customary for Supervisors to provide some basic assistance to their employees. The Supervisor's assistance was incidental and was not provided out of necessity nor did it encroach upon Carman Nickless work covered by Rule 2.1(m).

Last, the Carrier argues that even if the claim had merit, which it denies, the remedy requested is not supported by the Agreement or the facts of the case. The assistance provided by the Supervisor did not exceed 45 minutes. Therefore, there is no basis to the Organization's claim for eight hours at the overtime rate of pay.

The Board has reviewed the record and finds that the Carrier violated the Agreement. Accordingly, while Carrier violated the Agreement, the Board holds that the amount of work indicated in this record would not accord the payment requested. Claimant shall be compensated one hour's pay at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

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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 6th day of August 2007.