

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13961
Docket No. 13850
08-2-NRAB-00002-080002

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

(Brotherhood of Railway Carmen Division of TCIU)
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- "1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 2 when they arbitrarily allowed or otherwise ordered Carman William Pierce to perform Carman/Painters duties at Waterville, ME.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Edward Fortier in the amount of six (6) hours at the rate of time and one-half. This is the amount he would have been compensated had the Carrier not violated our Agreement."**

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 the Organization's position that the Carrier violated Rule 2.1 on July 13, 2006, when it ordered or otherwise allowed Carman William Pierce, who is Carman/Roadman to perform work in the Paint Shop at Waterville, ME. Pierce primed two freight cars and was required to work overtime. Claimant, who is a Carman/Painter, was on his rest days and was available for this work and should have been called and because he was not called the claim should be sustained.

It is the position of the Carrier that it did not violate the Agreement. It argues there is only one Carmen's Roster on the property and that the work at issue in this case falls under the scope of covered work, therefore, any Carman who was qualified may perform the work. It was not necessary to call the Claimant on his rest day for this work because Pierce was qualified and readily available as he was on the property. Subsequently, it was necessary for the Carrier to keep him on duty to prime on overtime as no other Carmen that were on duty volunteered to stay and complete the task. It concluded by arguing that an identical claim identified as CM-03-07 which it denied in 2003 and was not progressed any further by the Organization set the precedent for the future because it was not further appealed.

The Board has reviewed the record and determined that the Carrier stated that a claim identified as CM-03-07 was identical to the present case and declined by it in 2003 and the Organization chose not to appeal that decision. The Organization acknowledged that statement as being correct and offered no reason why the aforementioned claim was not taken to arbitration nor did it distinguish that claim as being different from the instant dispute. As far as this record reveals the parties have handled like situations since 2003 in the same manner as the prior declined case until the instant claim. In addition the facts further indicate that the work performed by Carman Pierce was a continuation of the work he had been performing all day. In Second Division Award 13935, involving the same parties, the Board stated: "Numerous awards have held the Carrier is not required to call any other Carmen to complete the work of others when it is continuous." The Board finds and holds that because the present case was not distinguished as being different than the former declined case on the property and the fact that the overtime work performed by Pierce was continuous with the work he had been doing there is no proof that the Carrier violated the Agreement.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of October 2008.