

Award No. 916

Docket No. 849

2-CB&Q-CM-'43

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That the carrier violated the controlling agreement and Rule 72 (c) and Rule 10 (a) thereof when—

- (a) On March 24, 1942, Carman Alex Potts was assigned to accompany the wrecking crew and to work two and one-half (2½) hours overtime from 4:30 P. M. to 7:00 P. M.
- (b) On April 11, 1942, Carman Alex Potts was assigned to accompany the wrecking crew and to work six and one-half (6½) hours overtime from 4:30 P. M. to 11:00 P. M.

That in consideration of the aforesaid violations Carman C. T. Babbitt, regularly assigned member of the wreck crew is entitled to be paid:

- (a) On March 24, 1942, at the time and one-half rate for two and one-half hours.
- (b) On April 11, 1942, at the time and one-half rate for six and one-half hours.

EMPLOYES' STATEMENT OF FACTS: That carrier maintains a wrecking outfit and a regularly assigned wreck crew at St. Joseph, Missouri, and that Carman C. T. Babbitt is regularly assigned as a member of said wrecking crew, his regularly assigned shop hours being from 8:00 A. M. to 4:30 P. M.

Carman Alex Potts' regularly assigned hours are from 8:00 A. M. to 4:30 P. M.

Carman C. T. Babbitt worked his regularly assigned shop hours on March 24, 1942, and on April 11, 1942.

On March 24, 1942, and on April 11, 1942, carrier assigned the wrecker, the wreck foreman, the derrick engineer and Carman Alex Potts to handle some equipment for the St. Joseph Street Railway Company. At St. Joseph shops there is a call list maintained in the car department for the purpose of distributing the overtime equally and Wreck Crew Member C. T. Babbitt was first out for overtime on that list.

In the instant case, the character of the service performed made necessary that an employe possessing the qualifications of Carman Alex Potts be used and the management exercised the prerogative conveyed to it by the precise provisions of Rule 72 (c) in judging the nature of these requirements. There is, therefore, no violation of Rule 72 (c).

Rule 10 (a), the second schedule provision alleged to have been violated reads:

For the purpose of distributing overtime hours and time worked outside of bulletined hours as equally as is consistent between men of respective seniority rosters in each craft or trade, call list will be drawn up so that men of each craft on each shift may take care of the work on such shift.

In addition, there is in existence an agreement of September 19, 1940, "concerning interpretations of certain provisions contained in schedule agreement effective October 1, 1940." A copy of this memorandum of agreement is submitted as carrier's Exhibit A and by such reference is made a part hereof. The provision pertinent to the point at issue in this controversy is captioned—"Rule 10, Distribution of Overtime." It reads as follows:

In the distribution of overtime, including Sunday and holiday work, under the provisions of this rule, **it is mutually agreed between the parties that the Management reserves the right to call employees who by their training and experience, are competent to perform the service for which called.**

Thus it is evidenced that the carrier had the privilege under Rule 10 (a) and agreed upon interpretations of that provision to call an employe who by his training and experience was competent to handle the extremely heavy generators for the power company and that man was Carman Alex Potts, the employe who was called for the service. In consideration of the foregoing, it should be obvious to anyone that Rule 10 (a) was not violated.

Moreover, the service performed and here made a basis of dispute is in no sense wrecking service nor is it work generally recognized as carmen's work. On this premise, neither the claimant nor the employe who was used had a contractual right to the service, but the management did have the right to use either or neither of them, depending upon service requirements **and under the provisions of Rule 72 (c) the management is the sole judge with respect to requirements.** As a matter of fact, the Second Division, in its Award 816, denied a claim which was predicated upon service and circumstances almost identical with those obtaining in the instant dispute.

In conclusion, the carrier avers it has proved conclusively that the provisions of Rules 72 (c) and 10 (a) were not violated and, furthermore, that it has the right to call for service of the nature here involved, such employes as are needed and is not obligated to call employes who are not needed, in view of which this claim is not substantiated by the rules cited and must therefore be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The facts disclose that the service upon which this claim is based was "other than wrecking service." Rule 72 (c) is applicable; under this rule and the facts of record, carrier was privileged to use Carman Potts to perform the service. Also see Award 816.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.