

Award No. 933

Docket No. 895

2-CRI&P-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

(Frank O. Lowden and Joseph B. Fleming—Trustees)

DISPUTE: CLAIM OF EMPLOYEES: (a) That on December 24, 1942, this carrier violated the controlling agreement and Rules 8, 27, 109, 110 and 115 thereof when they assigned Carman Helper Grady Cochran to fill the place of the regularly assigned car inspector, Mechanic Grover C. Woner, who was laying off.

(b) That Extra Inspector Fulton Shope be compensated for three (3) hours at the time and one-half rate computed at the basic hourly mechanics' rate of eighty-eight (88) cents per hour, because of said violation and because of him not having been called for this work.

EMPLOYEES' STATEMENT OF FACTS: At Silvis, Illinois, on December 24, 1942, regularly assigned inspector, Mechanic Grover C. Woner, whose regular tour of duty is from 4 P. M. to 12 Midnight, notified Foreman Horton at approximately 8 P. M. that evening that he desired to lay off at 9 P. M., and was granted permission to do so.

Foreman Horton of Silvis, did not, however, make any attempt to call Inspector Fulton Shope in the elapsed time between the hours of 8 P. M. and 9 P. M., but at 9 P. M. took it upon himself to take **Carman Helper (Oiler) Grady Cochran** off his regularly assigned position as car oiler—and who was working from 4 P. M. to 12 Midnight on his regular assignment as such—to fill the position left vacant because of Car Inspector Woner laying off.

This carrier made no attempt whatsoever to call extra inspector, Fulton Shope, who was first out on the mechanics' extra or overtime board, for such work as this, even though he was ready, willing and available for such call and extra work; and, even though, as the records plainly indicate, the first train to arrive in the Silvis yards after 9 P. M., or after Regular Inspector Woner actually laid off, was Train No. 111 which arrived at 10:05 P. M., and the first train to depart was Train No. 909 scheduled to leave the yards at Silvis, Illinois, at 10:30 P. M. that night.

POSITION OF EMPLOYEES: In declining this claim for payment, this carrier assumed the ridiculous position that this case came within the category of emergency and could not be anticipated in advance, and, therefore, it was well within its rights in using a helper to fill a mechanic's place in the instant case.

The language of Rule 27 (similar to our Rule 1) requires the contracting employe party to furnish eight consecutive hours of work for a day's pay either by a regularly assigned employe or his substitute or by a combination of both.

Under circumstances like those in the instant case which are beyond the control of the contracting employer party the carrier should not be penalized by requiring it to pay for more than 8 continuous hours for a regular day's work where overtime is not involved.

This is a case of relief work and not a case involving fluctuating or temporary increased work which cannot be handled by regularly assigned employes or a case of reduction by the carrier in hours of an extra or regularly assigned employe.

The claim should be denied as without merit.

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 use of Carman Helper Grady Cochran to perform mechanic's (carman's) work was a violation of Rule 27, which expressly prescribes that "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft."

A carman should have been used to perform the work in question, or called under the provisions of Rule 8.

The Division is unable to determine from the record whether or not the claimant is entitled to the compensation in the instant case, therefore, without prejudice to other or future claims, the instant claim for compensation is disallowed.

AWARD

Claim (a) sustained.

Claim (b) disposed of in accordance with last paragraph of the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 28th day of June, 1943.