

Award No. 976

Docket No. 904

2-Erie-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carman W. Purdy, Carman Welder S. J. Kubiak and Carman Helper C. Magee, be paid time and one-half for all time worked on cars CNW 43797, Soo 54231 and Sou 117570, Sunday, November 29, 1942 under the controlling agreement effective August 1, 1942.

EMPLOYEES' STATEMENT OF FACTS: Carman W. Purdy, Carman Welder S. J. Kubiak, Carman Helper C. Magee, were scheduled to work, according to bulletin, Sunday, November 29, 1942, on running repairs to cars that were essential for the continuous operation of the railroad.

On November 26, 1942, a number of freight cars arrived in Hornell, New York yards loaded with machinery. Upon inspection it was found that the machinery was not loaded according to regulations, or the loads had moved in transit, making it necessary to reload and in one case transfer the load to another freight car.

These cars stood idle in Hornell yards until Saturday, November 28, 1942. On that day carmen and carmen helpers were assigned to reload and prepare the cars for shipment. The work continued on through Sunday, November 29, and Monday, November 30. The work was completed and the cars shipped on December 1 and 2, 1942.

Carman W. Purdy worked eight (8) hours, full tour of duty on Sunday, November 29, 1942, making and applying wood blocking, to make loads secure for rail movement.

Carman Welder S. J. Kubiak welded extensions to binder rods to bind the loads to the cars. He worked four (4) hours on these cars Sunday, November 29, 1942.

Carman Helper C. Magee worked six (6) hours on Sunday, November 29, 1942, assisting carmen in reloading and reblocking of these cars.

POSITION OF EMPLOYEES: It is the contention of the employees that the work performed on cars CNW 43797, SOO 54231, SOU 117570 on Sunday, November 29, 1942, was not running repairs; therefore these three (3) employees should be paid time and one-half for the time worked on these cars on that day.

on that day. The fact that it was necessary to call out additional carmen who were not assigned to work on that day is not controlling for pay purposes here because this same situation might occur on any other day in the week when a carman is called out to work on his assigned day off and paid under Rule 4 (c) which provides "Any employe required to work on his assigned day off will be paid on time and one-half rate." The fact that some employes who were called out were compensated at time and one-half rate under the rule does not mean that other employes regularly assigned to work on that day should also be entitled to the time and one-half rate.

In the second occurrence November 26, 1942, all of the work was performed by regularly assigned employes and likewise Welder Kubiak was regularly assigned by bulletin to work on Sunday, November 29, and the welding which he performed in connection with the loaded car was merely incidental to his day's work in the car yard. There is no rule requiring payment of time and one-half rate to a welder in such circumstances.

In neither of the occurrences were there actual car repairs involved. In the first occurrence it was a question of reblocking an important shipment to get it to its destination as soon as possible. In the second occurrence it concerned a shipment loaded on the cars at Hornell and an agreement with the shipper that the railroad do the tying and blocking. The shipper was anxious to have shipment reach its destination quickly because of war work. For that reason the railroad continued the blocking and tying down of load on the car through Sunday the 29th, all by regular assigned men. There were no other claims filed.

The employes in the progress of this claim alleged that the work performed on these cars was not running repairs and that punitive rates should have been paid to all employes who worked on these cars Sunday, November 29, 1943; however, there was no work performed on the cars and the only work done was incidental to the movement of loaded revenue cars so as to reach destination quickly because of war work.

This claim is not justified and we feel it should be denied by the Second Division for the following reasons:

1. No work was performed repairing cars.
2. The work was incidental and was performed in connection with reloading, blocking and tying down revenue loads which is work necessary for movement of revenue freight for war work.
3. Carmen's classification work rule is not applicable here.
4. The fact that some carmen were called in on their day off in order to assist on these cars and under the rules were paid time and one-half rates because of having been called in on day off is not controlling and does not justify the payment of time and one-half rates to other employes who were regularly assigned to work on these days, because of working with such men.
5. It is not unusual to have some men paid time and one-half rates working with others paid straight time rate.

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 waived right of appearance at hearing thereon.

The evidence of record supports the conclusion that the work performed by Carman Purdy, Carman Welder Kubiak, and Carman Helper Magee in connection with the specified cars, on Sunday, November 29, 1942, falls within the time and one-half provision of Rule 4 (b), and not within the exceptions specified in that rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1943.