Award No. 1365
Docket No. 1274
2-C&EI-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 20, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the assignment of laborer Thomas Bray to perform carman helper's work from 7:00 A. M. to 3:30 P. M. with a thirty minute lunch period on Sunday, February 1, 1948, was improper under the current agreement and that accordingly the carrier be ordered to compensate Carman Helper John W. Girton for said work in the amount of 8 hours at the time and one half rate.

EMPLOYES' STATEMENT OF FACTS: At Evansville, Indiana, the carrier maintains a car repair track and thereon a regular force of carmen and carmen helpers from 7:00 A. M. to 3:30 P. M. with a lunch period of thirty minutes from 12:00 noon to 12:30 P. M., including the assignment of laborers to work the same hours.

As the result of an overflow of repairs to cars, the carrier assigned the entire repair track force to work Sunday, February 1, 1948, and in addition thereto, used or assigned Laborer Thomas Bray as a carman helper for 8 hours.

Carman Helper John W. Girten, hereinafter referred to as the claimant, was regularly employed in the Belt Yards a short distance from the repair track, during the hours of 11:00 P. M. to 7:00 A. M., with a seniority date as of July 17, 1945. The carrier foreman made no arrangements to have the claimant double over on repair track Sunday, February 1, 1948, instead of using Laborer Bray as a carman helper but the foreman did arrange to notify the claimant, Saturday, January 31, that his job in the Belt Yards would not work Sunday, February 1, 1948.

The claimant was available and willing to work on the repair track Sunday, February 1, 1948, which is affirmed by the offer of the carrier to allow him only 8 hours at straight time. Settlement for less than the claimant's whole loss of 8 hours at time and one-half, which was paid Laborer Bray, is not acceptable.

The agreement effective July 15, 1944, as subsequently amended is controlling.

Carrier's position in this respect is supported by Awards 1268 and 1269 of the Second Division involving similar disputes. In those cases the Board stated: "We are, however, of the opinion that this claim should be sustained at the pro rata rate only. While it is true that if claimant had performed the work on his day off, his rate would have been time and one-half, however, the penalty rate for depriving an employe of work is the pro rata rate of the position." This is a just and proper determination of the issue. To hold otherwise, would not only be grossly unfair, but contrary to the intent of the rule.

Carrier has been and is willing to dispose of the instant claim on the basis of eight hours at the pro rata rate. In view of the language of the rule and the awards above cited, claimant's demand for reimbursement at the punitive rate is without merit and carrier respectfully petitions your Honorable Board that it be declined.

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 work here involved was performed on Sunday, February 1, 1948, between the hours of 7:00 A. M. and 3:30 P. M. with 30 minutes off for lunch. The only question involved is the rate of pay at which the claim should be allowed. It is apparent that carrier paid the carmen and carmen helpers used at the rate of time and one-half.

The penalty rate for work lost, because it is improperly given to one not entitled to it under the agreement, is the rate which the employes to whom it was assigned would have received if they had performed the work. That is, the rate is the same as the carrier would have had to pay the employe regularly assigned thereto if, in the first instance, such employes had performed it. In this case that is the rate it paid to the carmen and carmen helpers used.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1950.