

Award No. 1743
Docket No. 1644
2-PRR-URRWA-CIO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE PENNSYLVANIA RAILROAD COMPANY
(Eastern Region)

DISPUTE: CLAIM OF EMPLOYEES: The instant dispute was designated on the property of the Carrier at Mount Carbon, Pa., Philadelphia Terminal Division, Eastern Region.

The claim on behalf of H. H. Boussum, Car Repairman Helper, Mount Carbon, first trick for four and one-half hours—at the applicable Carmen Helpers' punitive rate for October 30, 1951.

This claim is due to the unilateral action of the Carrier in assigning George Glassmire, who is junior to claimant, to the duties of assisting Carman in re-railing a car at Pottstown, which duties involved the working of four and one-half hours overtime on the day in question.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties hereto, dated July 1, 1949 and subsequent amendments, copy of which is on file with the Board and is, by reference hereby, made a part of this statement of facts.

At Mount Carbon, Philadelphia Terminal Division, Eastern Region, the Pennsylvania Railway Company, hereinafter referred to as the carrier, employs a force of carmen and carmen helpers.

The aggrieved, H. H. Boussum, herinafter referred to as the claimant, is employed at the seniority point in question as a car repairman helper, first trick, tour of duty rest days—Saturday and Sunday.

A claim was instituted at the foreman's level on behalf of H. H. Boussum, car repairman helper, first trick—for four and one-half hours pay, at the punitive car repairman helper's rate, for October 30, 1951—due to working a junior helper, George Glassmire overtime, this date.

The claim was then appealed to the master mechanic and denied December 31, 1951 (see employees' Exhibit B).

The claim was then appealed to the superintendent and denied (see employees' Exhibit C).

ment. The reasoning contained in Award 3193, supports this holding and is reaffirmed. See Awards 2695, 3049, 3222, 3251, 3271, 4196. Awards by other referees to the same effect are: 2346 (Burque) 2823 (Shake), 3859 (Youngdahl) 3232 (Thaxter), 3371, 3375, 3376 (Tipton), 3504, 3505 (Douglas), 3609 (Rudolph), 3745, 3770, 3837 (Wenkle), 3876, 3910 (Yeager), 3890 (Swaim), and 4037 (Parker)."

It is respectfully submitted, therefore, that if your Honorable Board should decide, contrary to the facts, that the claimant is entitled to be paid for the time not worked by him on October 30, 1951, compensation therefor may not properly be granted at the punitive rate.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the United Railroad Workers of America, CIO, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the use of Glassmire for the work in question was proper and in accordance with the long continued practice then in effect at the location in question, that there has been no violation of the agreement insofar as claimant is concerned, and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

The carrier demands strict proof by competent evidence of all facts relied upon by the claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

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.

On October 30, 1951, Car Repairer J. J. Smith with Car Repairman Helper Glassmire were directed to take a one and one-half ton auto supply truck containing jacks, blocks, re-railers, etc., to Pottstown, Pa. and re-rail a freight car at that location.

While it is true that the senior carman helper was not used in this case, this Division, after a careful review of the record and the statements contained therein, is of the opinion that the time claim in the instant case should be disallowed.

AWARD

Claim disposed of in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February, 1954.