Award No. 1771

Docket No. 1676

2-GC&SF-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement other than a Carman was improperly used on line of road to inspect and maintain journal box roller bearing on Lounge Car 1375 on May 13, 1953.

(2) That accordingly, the Carrier be ordered to compensate additionally Carman Odell Hass in the amount of eight (8) hours' pay at his applicable overtime rate for May 13, 1953.

EMPLOYES' STATEMENT OF FACTS: Carman Odell Hass, hereinafter referred to as the claimant, is regularly employed, bulletined and assigned at Fort Worth, Texas, as a car inspector, with bulletined and assigned hours, 11:00 P. M. to 7:00 A. M., work week Friday through Tuesday, Wednesday and Thursday rest days.

In addition to the claimant, there was employed by the carrier at Fort Worth, Texas on May 16, 1953 at least eighteen (18) other carmen.

On Tuesday, May 16, 1953, lounge car 1375, which had been previously cut out of train at Fort Worth, Texas account bad order journal box, was set into train No. 16 (Texas Chief) at Fort Worth, without having been repaired. Due to the fact that oil was leaking out of the journal box, it was necessary for someone to ride lounge car 1375 to make inspection and service the journal box at every station or between station stops made by the Texas Chief, train No. 16.

Coach Shop Foreman O. H. Barker, who is regularly assigned as such at Cleburne, Texas, was assigned by higher supervision to ride lounge car 1375 in train No. 16, to make the inspection and service the journal box, which he did on May 16, 1953 at Gainesville, Texas, and every stop between Gainesville, Texas and Purcell, Oklahoma—a distance of approximately 150 miles.

Without any reflection on Mr. Hass, the fact remains that, while working as an upgraded helper, he had obtained only approximately 275 days of actual experience as a car inspector and obviously did not have the knowledge or experience to qualify him to pass judgment on the condition of the roller bearing equipment involved.

Due to a shortage of carmen and the carrier's inability to obtain a sufficient number of employes meeting the qualifications required of a carman, Mr. Hass was merely upgraded from a helper to work as a car inspector, without seniority as such, and was in reality serving a probationary period pending the acquisition of four years of practical experience as a carman. The carrier would have indeed been extremely negligent if it had risked endangering the lives of its passengers by permitting such an inexperienced employe to assume the responsibility for the safe operation of lounge car 1375.

The carrier also desires to point out that oil was applied to the box in question only at Ardmore and Purcell and that carmen are regularly employed by the carrier at each of those points, who could have been required to apply the oil. If any employes have a legitimate claim, (which is not admitted) they would be the men at Ardmore and Purcell where the oil was applied to the box, and no claim has been filed in their behalf.

Without prejudice to its position, as previously set forth herein, that the claim of the employes in the instant dispute is entirely without support under the rules of the governing agreement, the carrier desires to call attention to the fact that the claim in behalf of Mr. Odell Hass is for "eight (8) hours' pay at his applicable overtime rate", which the carrier construes as meaning "eight hours at time and one-half". It is a well-established principle, consistently recognized and adhered to by both the Second and Third Divisions of the National Railroad Adjustment Board, that the right to work is not the equivalent of work performed under the overtime and call rules of an agreement. See Second Division Award No. 1601, from which the following excerpt is quoted from the Findings of the Board:

> "We think also that the pro rata rather than the overtime rate is the proper one to apply to the two hours and forty minutes. We follow the principle set forth in many previous awards of this Board that, when some employe other than a claimant has performed at a pro rata rate work properly belonging to the claimant at an overtime rate, the pro rata rate is sufficient to penalize the carrier and to make whole the claimant, who actually did not perform the work.",

also Third Division Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

In conclusion, the carrier respectfully reasserts that the claim of the employes in the instant dispute is entirely without merit or support under the agreement rules and should be denied in its entirety.

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.

Claimant is a regularly assigned car inspector at Fort Worth, Texas. On May 13, 1953, Lounge Car 1375, which had been previously cut out of a train because of a bad order journal box, was set into Train No. 16 at Fort Worth without having been repaired. Because of its condition, it was necessary for a competent mechanic to ride the car to inspect and service the defective journal box at all stops. Coach Shop Foreman O. H. Barker, regularly assigned at Cleburne, Texas, was used for the purpose. The organization contends that the work belonged to carmen and that carrier violated the agreement in using a supervisory officer.

It appears that the work performed consisted of checking the condition of the journal box at every stop and adding oil as required because of its leaky condition. This is the work of carmen under Rule 102 and 29 (a), current agreement.

Carrier urges that a foreman may properly inspect defective parts and make the decision as to what shall be done to remedy the situation. We agree with this statement and to that extent the foreman was acting within the terms of the agreement. But the actual maintenance of the journal box after the decision of the foreman was made, is work reserved to carmen.

The claim seeks payment for the work lost at the overtime rate. The overtime rule has no application to time not worked. It applies only where an employe works in excess of eight hours in one day. The loss sustained is the time worked by the employe not entitled to perform it at the contract rate set forth in the agreement, to wit, the pro rata rate. The claim will be sustained at such rate. Awards 4244, 4645, 5929, 5967, Third Division. Awards 870 and 871, Fourth Division, cited by claimant, are neither logical nor supported by authority. They attempt to apply a speculative value to the work under a rule that never became operative rather than the value of the work as fixed by the parties themselves under the collective agreement.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1954.