

**Award No. 1995
Docket No. 1836
2-CRI&P-CM-'55**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current Agreement the Carrier improperly assigned T. N. Wilcoxson to perform Carmen's work at Dalhart, Texas during the period June 24, 1953 to July 3, 1953, both dates inclusive.

2. That accordingly, the Carrier be ordered to additionally compensate Carmen R. R. Ehart and L. J. Bolton by equally dividing among them the number of hours worked by Wilcoxson at the time and one-half rate on Carmen's work during the aforesaid period.

EMPLOYES' STATEMENT OF FACTS: At Dalhart, Texas car shop the carrier maintains a force of approximately twenty carmen where both passenger and freight cars (both wood and steel) are repaired. This car shop operates during the hours from 8:00 A. M. to 12:00 Noon and from 1:00 P. M. to 5:00 P. M.

T. N. Wilcoxson, a furloughed machinist helper, worked on June 22 and 23 as a carman helper. On June 24, he was assigned to a carman's position performing carmen's work by Car Foreman Williams.

The memorandum providing for the advancement of helpers to mechanics positions is submitted herewith and identified as employees Exhibit A.

The carmen named in the employees' statement of claim were regularly employed on an opposite shift and were available to perform the work. The agreement dated October 16, 1948 and memorandum of agreement dated May 23, 1952 are controlling.

POSITION OF EMPLOYES: Reference is made to the following from page 1 of the memorandum of agreement dated May 23, 1952, captioned "Regular Apprentices, Helper Apprentices and Helpers—Promoted to Carmen:"

"Apprentices and helpers for advancement to Carmen classification may be advanced as follows:

You will note Secretary-Treasurer H. O. Thompson of the system federation received copy of the above instructions which satisfied their complaint.

How, then, in view of the fact neither of the claimants held carman mechanic rights and, by request of the organizations, could not be considered as carman (mechanics), can it be said they have any just complaint or merit in their claim because of Mr. Wilcoxson performing carman work in this emergency period.

We contend that as the claimants were not carmen under the provisions of Rules 27 and 109 of the agreement of October 16, 1948, they have no valid claim as petitioned for by the organization and as no carman helper was available for upgrading (as admitted by the organization) no claim has been filed for a carman helper who might have been entitled to upgrading under the memorandum of understanding if one were available, there is no merit to the instant claim under any agreement.

The claimants were fully employed and under pay during the period involved in this claim and hence have no just claim in any event. However, without prejudice to, or in any manner waiving our position as to the merits of the claim, it is the carrier's further position that should the claim be sustained, the only penalty that may be assessed is that at pro-rata rate of pay. (See your Board's Awards 1268, 1424, and 1601).

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.

At Dalhart, Texas, carrier regularly employs a force of approximately twenty carmen in the repair of passenger and freight cars. All freight car repairing was done on a single day shift.

The incident, basis of this claim, occurred during a period when the carrier was under great pressure to develop grain cars for grain loading. It asserts, without showing of proof, that no furloughed carmen were available in the entire district. To aid in preparing these cars, furloughed Machinist Helper Wilcoxson, who had experience with tools, was used on the repair track as carman helper on June 22 and 23, and on June 24, was assigned to work as a carman where he was so engaged through July 3, 1953. Carrier contends the exigency of the service demanded the use of Wilcoxson.

The organization does not take exception to Wilcoxson's service as a carman helper, but does question carrier's act in upgrading and using Wilcoxson as a carman on June 24 and thereafter in face of a Memorandum of Agreement dated May 23, 1952, and Rule 25 of the Agreement of October 16, 1948, as revised.

Under Rule 25 and paragraph (c-2) of said Memorandum, the parties clearly laid down the procedures to follow under conditions here prevailing. Such procedures were not followed and the omissions are so apparent from the record that we find no need to labor the point. Decisive is carrier's failure to effect accord with the organization's officers as required under both agreements. Carrier in its submission virtually concedes its failure to abide with its agreements in this case and seeks escape from the consequences by questioning claimants' rights to assert the claim as well as the allowance of the penalty rate for the violation.

The organization in the first instance, and the Division in the event of the organization's failure, will protect the carrier against the assertion of dual claims. We find no reason why claimants, who worked another shift, could not have been called to perform this work on overtime, but, if not, they were parties to an agreement which had been violated and accordingly possessed the right to take steps to uphold it by asserting claims.

We have many times held that the overtime rate is applicable only to time actually worked and that the pro rata rate is the measure of value of work lost. (Awards 1771, 1772 and 1803)

AWARD

Claims sustained but at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October, 1955.