

Award No. 3405
Docket No. 2951
2-CRI&P-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly assigned a Store Department employe to operate a boom type crane in performing Carman Helpers' duties at Cedar Rapids, Iowa, during the period February 12th to the 26, 1957, inclusive.

2. That, accordingly, the Carrier be ordered to compensate the Carmen Helpers whose names are shown below, at the applicable rate and one-half for the number of days indicated on the dates shown in connection with their respective names on February 12th through February 26th, 1957:

L. R. Wise — 8 hours — February 23rd
and

W. A. Merritt — 8 hours — February 12, 13, 14, 15, 18,
19, 20, 21, 25 and 26.

EMPLOYEES' STATEMENT OF FACTS: L. R. Wise, hereinafter referred to as one of the claimants, is employed by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, as a carman helper at Cedar Rapids, Iowa. Claimant is regularly assigned on the repair track from 7:30 A. M. to 12 Noon and 12:30 P. M. to 4:00 P. M., Monday through Friday, with Saturday and Sunday as rest days.

W. A. Merritt, hereinafter referred to as one of the claimants, is also employed by the carrier at Cedar Rapids, Iowa, as a carman helper. Claimant is regularly assigned in the train yard on the 3:30 to 11:30 P. M. shift, Monday through Friday, with Saturday and Sunday as rest days.

department crane was out of service, the stores department crane and operator would similarly be used.

In the instant case, the mechanical department crane was out of service and the stores department crane and operator qualified to operate this particular type of crane was used.

For the above reasons, we respectfully request your Board to deny the claim.

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.

Parties to said dispute were given due notice of hearing thereon.

It is undisputed that on February 12, 13, 14, 15, 18, 20, 23, 25 and 26, 1957 Store Department employes operated a Store Department crane in connection with work being performed by carmen on the rip track, and that in such circumstances operation of that type of crane is assigned to carmen helpers under the provisions of Rule 48 of the carmen's agreement. 1

The carrier's claim of past practice in justification is categorically denied by the employees. The unmistakable language of Rule 48 does not permit resort to contrary past practice, even if shown by the greater weight of the evidence. ✓

The proper rate of compensation for work not performed is the pro rata rate of the craft or class to whom the work is assigned by the agreement. In this case the claimant who was on duty on any of the dates above mentioned, is entitled to be paid carman helper's pro rata rate for the time spent by a Store Department employe in operating the crane in connection with work on the rip track. 7

AWARD

Claim sustained in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1960.