

Award No. 3672
Docket No. 3729
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA,
A. F. of L.—C. I. O. (Railroad Division)**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE AND EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. F. Garee bid a car oiler and packer's job at Newell car shop and was awarded the job and still holds this job. On April 14, 1959 the foreman took him off this job and sent him out to the hump (inspection yard) to scatter sand around the oiler that is used to oil cars. This work belongs to the section employees and not carmen. Since F. Garee was required to do this work the organization requests that he be compensated four (4) hours for doing this work.

2. Also on April 14, 1959 the foreman instructed F. Garee to go to the storehouse with a motor car and load it up with the following material: fuses, batteries, torpedos, janitor supplies, stationary and then to deliver this material to the Newell Yard office. This material was for the use of trainmen, clerks and janitor. The delivering of this material belongs to the storehouse employees and not car department employees. Since F. Garee was required to perform this work the organization requests that he be paid four (4) hours for doing so.

EMPLOYEES' STATEMENT OF FACTS: This case arose at Newell, Pa., and is known as Case N-36. F. Garee bid a car oiler and packer's job in the car shop and was awarded this job. He was then taken off this job and (1) required to go to the inspection yard to perform work that has always been performed by section employees and (2) to deliver material to the Newell Yard office for use for employees of other crafts and this work has always been done and belongs to the employees of the storehouse department.

performance of the service in dispute required approximately one and one-half hours' work incidental to claimant's assignment, which work was performed by claimant while on duty and under pay. The claims for penalty pay as requested certainly cannot be justified, and carrier respectfully requests that the claims be denied.

CONCLUSION:

Carrier has shown hereinbefore that the work complained of consisted of approximately one and one-half hours of claimant's normal assigned hours and such work was merely incidental to his assignment as a helper.

It has also been shown that the claims for penalty payment lack agreement support and therefore must be denied, which is supported by numerous awards of the Second Division, National Railroad Adjustment Board.

Carrier respectfully requests that the claims as presented be denied.

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.

Claimant F. Garee held a regular assignment as a car oiler and packers job, with hours of assignment for 7:30 A. M. to 4 P. M.

During the course of Mr. Garee's assignment on April 14, 1959, the foreman instructed him to use a motor car and take a buggy of sand, and proceed to the hump to scatter sand around the automatic oiler, also the foreman instructed him to pick up certain material for use at yard office. The materials were placed on the motor car by the Storekeeper. Material carrier Darrock accompanied Mr. Garee. About one hour and a half was consumed by Garee in the performance of the above tasks. Claims by both employes were submitted, requesting 4 hours pay for scattering sand, and also four hours pay for handling the Storehouse Materials. These claims were denied, and the claims for Mr. Garee were progressed.

The carrier raises several reasons why the claims should be denied. We will discuss only one of them, to wit, the claims for penalty pay are without agreement support.

The claimant was fully paid for the work he performed, he lost nothing. The employes have not cited any rule of the Agreement to support the claims for penalty pay, in fact we think they have conceded same in their submission, we quote from Employes Submission:

"The organization also takes the position that the Second Division, National Railroad Adjustment Board has sustained the position of other organizations when employes of other crafts performed work that did not belong to them that employes that the work belonged to should be paid and now the

organization feels that the same should be done in reverse in this case and the employees that were required to perform work that did not belong to him be compensated as asked for in his original case. To sustain this position the organization would like to have the Board refer to the following decisions: Docket No. 309 — Award 304; Docket No. 339 — Award No. 358; Docket No. 426 — Award No. 408; Docket No. 699 — Award No. 693; Docket No. 1201 — Award 1269; Docket No. 1274 — Award No. 1365; and Docket No. 2474 — Award No. 2784."

In the absence of a rule in the agreement which would support the penalty claims, they will have to be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.