Award No. 3885

Docket No. 3276

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O.
(Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 — That under the current agreement car inspectors working in the Car Department at Hoisington, Kansas are being improperly required to perform locomotive carpenter and diesel work at the freight carmen's rate of pay ($2.43 per hour) instead of being paid the rate paid locomotive carpenters and diesel men ($2.47 per hour).

2 -- That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate car inspectors at Hoisington, Kansas, who were instructed to perform locomotive carpenters and diesel work, and paid the freight carmen's rate of pay instead of the locomotive carpenters' rate which amounts to four (4) cents per hour more than was paid car inspectors from the date of November 20, 1957 until this violation is discontinued. Time on locomotive work to be secured from time as charged by claimants and O.K.'d by foreman each day.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, reduced forces at Hoisington, Kansas which resulted in all machinists being furloughed and the repair track closed.

On November 20, 1957, the carrier instructed Car Inspectors C. M. Stafford, M. E. Houchin, M. S. Duvall, S. H. Doss, B. F. Quick, G. Tauscher, H. C. Muth and W. D. Decker, hereinafter referred to as the claimants, working at Hoisington, Kansas, that effective immediately (November 20, 1957) they were being required to perform all locomotive carpenter and diesel work. However, the carrier, instead of paying the claimants the rate of pay which is provided for in the controlling agree-

Summarizing, the carrier states that the claim must be dismissed because the monetary claim contained in the letter of intent filed with your Board has not been presented in behalf of a named employe and because the matter in dispute has been previously handled to a conclusion and denied and, therefore, must be considered closed.

Without waiving the foregoing contention that the claim must be dismissed, the carrier states that the claim in any event must be denied since the work assigned to claimants was strictly according to the agreement and that the carmen at Hoisington have been paid the proper rate for the positions which they occupy.

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.

Some time prior to November 20, 1957 all of the mechanical forces at Hoisington, Kansas, with the exception of freight carmen, were laid off because of lack of work. Since that date, inspection and minor repair work necessary to be done on the few diesel locomotives stopping or laying over at Hoisington have been handled by freight carmen.

The Brotherhood maintains that, to the extent freight carmen are required to perform locomotive carpenter and diesel work under these circumstances, they are entitled to be paid the hourly rate of locomotive carpenters, which is higher than freight carmen's rate.

The carrier contends that the claim is vulnerable because it does not name the individual claimants; that a similar claim at another point on the property was denied by the carrier and not further progressed, which consequently bars consideration of this case; that the carrier's position is supported by Article VII of the August 21, 1954 agreement, and that Rule 11 relied on by the employes is inapplicable.

The carrier cites paragraph 1 (a) of Article V of the August 21, 1954 agreement in support of its first point. That section provides that "all claims or grievances must be presented in writing by or on behalf of the employe involved." It urges that the article "the" preceding "employe" connotes the intention that a grievant can only be adequately identified by naming him, and that a claim in behalf of a class of employes who are not named falls short of this contractual requirement. We think the better reasoning, adopted in a number of prior awards, is that the purpose and intent of the agreement are satisfactorily served and the interests of the employer protected, if the record provides a reasonably accurate means of ascertaining the identity of the individuals involved, although not actually named. Here, the basis of the claim is on behalf of freight carmen at Hoisington, some or all of whom are from time to time, required to perform duties which were previously performed at that point by other mechanical forces. Examination of the carrier's records should readily

disclose the identity of the carmen who performed such work. Under the circumstances, we think the carrier's position with respect to naming claimants is not well founded.

The point raised in respect to the similar claim filed at Eldorado, Arkansas on November 12, 1955 lacks support. Whatever the factors were which motivated the decision of the grievant to drop the claim on the property, and they are not disclosed in the record, we see no rational basis for holding that the termination of that claim is conclusive on the issue now presented. Awards 2177, 1586 and 1510 do not justify such a holding in this case.

We accordingly consider the merits. The Employes rely on Rule 11 of the effective agreement which provides:

> "When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate, but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed."

The first portion of this rule is concerned with an employe filling the place of a higher rated employe. It is undisputed in this case that there were no locomotive carpenters or other mechanics than freight carmen employed at this point since November 20, 1957. Consequently there is literally no higher rated place to be filled within the meaning of the rule. Moreover, the phrase "fill the place of another" connotes something more than the casual occasions indicated by this record, on which a freight carman is called on to perform an emergency repair. Something more substantial in time and degree ought to be shown to justify an application of Rule 11. It should also be noted that the latter part of the rule refers to a higher rated employe "temporarily" filling the place of a lower rated employe. The fact that the contracting parties did not use the word "temporarily" in the first half of the rule would indicate that they were thinking about a more comprehensive taking over of the duties and responsibilities of the higher rated employe's place than is revealed in this record.

Finally, Rule 11 must be considered with the provisions of Article VII of the August 21, 1954 Agreement, and if possible to do so both of them should be given effect. The pertinent part of Article VII is that "at points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed." We think the desired result can properly be accomplished in this case by a recognition that the degree and extent of locomotive repair work done by these claimants at Hoisington has been such that it did not justify employing other mechanics. Consequently, we hold that the instant claim lacks support.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3885

The fact that there were no locomotive carpenters or other mechanics than freight carmen employed at this point since 1957 does not alter the fact that previous to that date mechanics performed locomotive work there and therefore when the claimants were required to perform such work they were filling the places previously filled by mechanics and were thus entitled to the higher rate prescribed in the agreement. The agreement established a rate of $2.47 per hour for locomotive work. The fact that the claimants were assigned as freight carmen does not operate to deprive them of the higher rate when they are performing locomotive work.

The finding of the majority that ". . . the desired result can properly be accomplished in this case by a recognition that the degree and extent of locomotive repair work done by these claimants at Hoisington has been such that it did not justify employing other mechanics" displays total lack of knowledge of the instant claim. The claim is not that other mechanics should be employed but that the claimants performing the work are being improperly paid and are entitled to the higher rate paid locomotive carpenters and diesel men, namely $2.47 per hour. The majority has committed grievous and substantial error in denying the employes' claim.

/s/ **Edward W. Wiesner**
Edward W. Wiesner

/s/ **C. E. Bagwell**
C. E. Bagwell

/s/ **T. E. Losey**
T. E. Losey

/s/ **E. J. McDermott**
E. J. McDermott

s/ **James B. Zink**
James B. Zink