

Award No. 4022
Docket No. 3797
2-P&LE-TWUOA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION OF
AMERICA, A. F. of L. — C. I. O.**

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

DISPUTE: CLAIM OF EMPLOYEES:

The carrier and the organization agreed that two (2) helpers would be used on each trick at the Gateway Shop at Struthers, Ohio. On May 4, 1959 only one (1) helper was used which meant that the carrier used a carman to operate the Shop Crane and Trackmobile. The work operating these machines is advertised and awarded to helpers. This work belongs to helpers. Since the carrier used carmen to do this work, the organization requests that the carrier compensate Helper C. Amicone, eight (8) hours at the premium rate of pay for this day. It was helper C. Amicone's rest day and he was available for the work performed by the carman.

EMPLOYEES STATEMENT OF FACTS: On the date mentioned above the carrier did use a carman to perform work that belongs to helpers by bid and award.

On the day in question Helper C. Amicone was available for the work performed by the carman.

The organization has an agreement with the carrier as to how many helpers shall be worked on each trick at the Gateway Shop, Struthers, Ohio. The carrier violated this agreement when the carrier used a carman to perform the work of a helper.

The carrier does advertise the jobs of operating the shop crane and trackmobile as helpers work and awards these jobs to helpers.

This case was handled on the property of the carrier in compliance with the present agreement and is known as Case Y-127.

time rate unless the Agreement specifically provides. This conclusion is supported by this Division Awards 2346, 2695, 3049. * * *

This same conclusion is also supported by the following Third Division Awards: 3232, 3376, 3251, 3271, 3504, 3745, 3277, 3770, 3371, 3375, 3837, 4073, 4196, 9028, 9044 and 9489.

CONCLUSION:

Carrier has shown that no violation of the seven-day week agreement occurred and there was no obligation to fill Position 6-R on Monday, May 4, 1959.

Carrier has likewise shown that the organization has failed to support by proof, the allegation that Carman Thiel performed Helper's work on May 4, 1959.

Carrier has shown that the request for premium pay is without foundation, and Awards of the National Railroad Adjustment Board support this position.

Carrier urges that the claim of the employees be denied or dismissed 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.

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

The claim is that by agreement two carmen helpers were to be used on each trick, but that on the second trick "only one helper was used which meant that the carrier used a carman to operate the shop crane and trackmobile", work claimed to belong exclusively to helpers. This was a rest day for one of the regularly assigned helpers, and the holder of the relief position which should have provided the relief, reported off duty, leaving a temporary vacancy.

The carrier denies the contention that the operation of the shop crane and trackmobile belongs entirely to helpers as against carmen, but states that in any event they were not operated by a carman on that day. It showed by the time card of Carman Thiel, the one claimed to have operated the equipment, that he spent his entire working time in repairing cars; it showed also by the time card of Helper Allshouse that 6.2 hours of his time was spent on helper and equipment operation work.

The Organization, which had the burden to establish the claim, offered no proof of the allegations concerning the operation of equipment. Consequently, whether this work belongs exclusively to helpers or not, the claim has not been established.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1962.