Award No. 4474
Docket No. 4028
2-NYNH&H-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement car inspectors Vallera and Wassell and car inspector Vallera were improperly assigned to repair cars on the Hartford, Conn., Car Department repair track on August 31, 1957 and October 3, 1957, respectively.

2. That accordingly the New York, New Haven and Hartford Railroad Company be ordered to additionally compensate carmen J. J. D'Elia, Jr., and K. W. Kapral, each, in the amount of eight (8) hours at the time and one-half rate of pay for August 31, 1957 and K. W. Kapral eight (8) hours at the time and one-half rate of pay for October 3, 1957.

EMPLOYES' STATEMENT OF FACTS: The New York, New Haven and Hartford Railroad Company, hereinafter called the carrier, maintains a car yard facility at Hartford, Conn., at which it employs J. J. D'Elia, Jr., and K. W. Kapral, hereinafter called the claimants, as carmen and/or car inspectors.

On August 31, 1957 two car inspectors, Vallera and Wassell, were taken from their regular assignments, inspecting trains in the yard, and assigned to the repair track to make repairs to the following cars:

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GMO 22313	SP 160263	

On October 3, 1957, car inspector Vallera was again taken from his regular assignment and assigned to the repair track to make repairs to a side ladder on car NYC 45892.

We submit that organization's attempt to exact payments in the instant case is in itself a contradiction.

On the one hand the organization holds it to be improper and violative of Rule 114 to have required regular assigned car inspectors to work with, or in place of the car repairer, and on the other hand submits as the proper action that other regular assigned car inspectors should have been called in at overtime to perform the work.

We respectfully submit that this contradiction, coupled with the organization's failure to justify the penalty requested in the light of the work actually performed, warrants a dismissal of the claim presented.

In summary, it is the position of the carrier that Rule 114 is not applicable, and that in any event the penalty requested is improper, inconsistent, and unsupported by any rule of the agreement.

We respectfully submit that the claim should 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 waived right of appearance at hearing thereon.

Prior to May 31, 1956, the Carrier employed three carmen, one carman helper and one laborer at its Hartford (Connecticut) car repair facility (repair track). Effective as of that day, said positions were eliminated. On the same day, Carrier established a position of derrick operator-carman which was advertised to work at the location of the repair track. In the course of time, this derrick operator-carman spent substantially all of his time in repairing cars and the assignment became, in effect, one of car repairer. In addition, a position of carman helper was established to assist the derrick operator-carman.

On August 31, 1957, two regularly assigned car inspectors, Vallera and Wassell, were taken from their assignments to inspect cars in the train yard and assigned to the repair track to make repairs on eight cars. On October 3, 1957, Vallera was also assigned to assist the derrick operator-carman in repairing a car standing on the repair track.

The Claimants J. J. D'Elia, Jr., and K. W. Kapral have been employed by the Carrier as regularly assigned car inspectors at Hartford but were not on duty on August 31, and October 3, 1957. They filed the instant grievance in which they contended that Vallera and Wassell were improperly assigned to repair cars on the repair track on said days. They requested compensation each in the amount of eight hours at the rate of time and one-half for August 31, 1957. Moreover, the Claimant Kapral requested compensation in the amount of eight hours at the rate of time and one-half for October 3, 1957. The Carrier denied the grievance.

In support of their claim the Claimants rely on Rule 114 of the applicable labor agreement which reads, as far as pertinent, as follows:

> "Regularly assigned Car Inspectors shall not, except in emergency cases, be required to work on repair tracks. This Rule does not apply where there is no regular assigned repair track force."

1. The Carrier defends its denial of the claim at hand on the ground that it abolished the Hartford car repair facility on May 31, 1956, and that "no regular assigned repair track force" existed at that point thereafter. It reasons, therefore, that the First Paragraph of Rule 114 is not applicable here in accordance with the Second Paragraph thereof. We disagree. The record shows that, upon eliminating the five positions previously assigned to the repair track under consideration, the Carrier assigned a derrick operator-carman and a carman helper to perform repair work on the repair track. The available evidence also discloses that certain cars in need of repairs were ordered by the Carrier's general foreman or assistant foreman to be placed on the Hartford "repair track" or "rip track" for repairs after May 31, 1956 (see: Organization's Exhibits "F", "G", and "H"). Accordingly, we are of the opinion that the Hartford car repair facility was not eliminated in 1956, as contended by the Carrier, but that the number of employes regularly assigned thereto was merely decreased from five to two, as asserted by the Claimants. It follows that the work here in dispute belonged to the derrick operator-carman and carman helper assigned to the repair track and that the assignment of said work to car inspectors Vallera and Wassell was violative of the First Paragraph of Rule 114.

2. The law of labor relations is well settled that a party to a labor agreement which has been found guilty of a violation of the terms thereof is generally subject to an appropriate penalty to insure compliance with the agreement even though the latter does not explicitly provide such penalty. See: Awards 4312, 4317, and 4332 of the Second Division and references cited therein. However, this is not a hard and fast rule permitting of no exceptions. See: Awards 4200, 4289, and 4472 of the Second Division. In the instant case, we are satisfied that the Carrier's violation of Rule 114 was caused by a misinterpretation or misunderstanding thereof rather than by an intentional disregard therefor. Under these circumstances, we disallow the claim for compensation without prejudice to other or future claims of the same nature.

AWARD

Claim 1 sustained.

Claim 2 disposed of in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.