Award No. 4575
Docket No. 4338
2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement when they assigned a section foreman to assist a Carman in changing wheels at Quincy, Washington because of a hot box.

2. That accordingly, the Carrier be ordered to compensate Everett Carman Milton Couch for 12 hours at the rate of time and one-half because of said violation.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Ry. Co., hereinafter referred to as the carrier, maintains a force of two carmen at the point of Ephrata, Wash. Their regularly assigned work week is Monday through Friday.

On May 21, 1961 freight car WFEX 65061 was set out at Quincy, Wash. because of a hot box (defective journal).

The carrier called the carmen from Ephrata to go to Quincy and change this pair of wheels and if necessary to call the section foreman. One of the carmen could not be reached so the section foreman was called as per orders from Division Superintendent R. H. Shober.

Time claimed is 4½ hours traveling to and from Ephrata and 3 hours for actual time worked.

This dispute has been handled with all carrier officials designated to handle disputes, all of whom have declined to adjust it.

The agreement effective September 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that under the clear and unambiguous language of Rule 83 reading in pertinent part:

The situation confronting the carrier was such as to cause it to believe, and in all probability, an emergency did in fact exist.

The action taken by the carrier was justified and it should be relieved from the application of the rule here invoked."

Even if it could be found that the carrier's actions in this case violated some rule or agreement between the parties, the claimant would still not be entitled to the 12 hours of overtime compensation demanded. The various divisions of this board have held, on numerous occasions, that the proper rate of compensation for time not worked is the pro rata rate, as in Second Division Award No. 3406, Carmen v. C.R.I.&P., Referee James P. Carey, Jr.:

"Claimant seeks payment for 4 hours at time and one-half rate. The proper rate of compensation for time not worked is the pro rata rate."

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWNG REASONS:

1. It is the carrier's prerogative to assign work and determine the number of employes necessary for efficient and economical operation, except where those fundamental rights are limited by law or by specific contractual provisions.

2. The organization bears the burden of proving by positive evidence that the carrier has limited its fundamental freedom to assign work by granting to carmen mechanics the exclusive right to perform the work in question.

3. There is nothing in Rule 42(a) which would reserve the work in question exclusively for carmen mechanics, unless it is specifically spelled out in some "special rule" applicable to such mechanics.

4. The vague general language of Rule 83 does not cover the work in question, and Rules 86 and 92 clearly indicate that the section foreman was performing work which may be assigned to helpers.

5. The absence of a rule comparable to Rule 42(a), reserving helper's work exclusively to helpers, indicates that the parties did not so intend.

6. Even if the organization could show that the work in question was reserved exclusively to carmen mechanics, this Board has consistently recognized an exception for emergencies such as that involved in the instant case.

For the foregoing reasons, the carrier respectfully requests that the claim of the organization be denied.

FINGINGS: 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 respectfully 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.

Carrier maintains a two man repair crew at Ephrata, Washington, work days Monday through Friday, Saturdays rest days.

On Saturday, May 20, 1961, an ice bunker refrigerator car loaded with apples was set out at Quincy, 17 miles West of Ephrata because of a defective journal. On Sunday, May 21, 1961, a telegram was sent to Armstrong, one of the repair crew, to rewheel this car, advising him to call the section foreman at Ephrata for help if necessary. The second repair crew man was unavailable, and Armstrong and the section foreman proceeded to perform the rewheeling.

Claimant is a Carman at Delta, Washington, a point about 163 miles from the point where the car in question was set out.

Rule 92 of the controlling agreement reads:

RULE 92. Carmen's Work Away From Shops.

> When necessary to repair cars on the road or away from the shops, two carmen, or one carman and one carman helper, will be sent to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, truss rods, wheels, putting cars on center and work of similar character."

While there is some dispute in the record, we find that the work involved was Carmen's work.

Claimant contends that the Carrier wrongfully used the section foreman to assist Carman Armstrong in the ewheeling of this car.

Carrier maintains that an emergency existed and an exception to the Rule is properly before us. Carrier further contends that the section foreman was performing work which could properly be assigned to a Carman Helper, and, therefore, there was no Rule violation.

Carman Helpers are a definite classification with a schedule hourly rate of pay, and the latter theory of the Carrier cannot be sustained.

The emergency situation contended for by Carrier was not such that an agreement violation can be condoned. The car had been set out the day before any action was taken to repair it. On the other hand, we are unable to impute any bad faith on the part of the Carrier in proceeding as it did under the circumstances presented, and consequently we make no monetary award.

AWARD

Claim 1: Sustained.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.