

**Award No. 4592
Docket No. 4423
2-CRI&P-CM-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly dealt with and thereby damaged Carman Painter D. E. Daniels when on Thanksgiving Day, November 23, 1961 Carman Painter Carl Canterbury was arbitrarily assigned to work eight (8) hours at the time and one-half rate.

2. That accordingly the Carrier be ordered to additionally compensate Carman Painter D. E. Daniels eight (8) hours pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad Company hereinafter referred to as the carrier maintains a large Car Shop and Locomotive Shop at Silvis, Illinois. Carmen painters, all from the same seniority roster at Silvis, are employed both in the car shop and the locomotive shop.

On November 22, 1961, the day prior to a Holiday, carman Painter D. E. Daniels, hereinafter referred to as the claimant, worked in the locomotive department as a painter. The painting was not completed on November 22, 1961 and Carman Painter Carl Canterbury was worked the following day, a holiday, to complete the painting.

The carrier made no attempt to contact the local committee to secure the proper employe for this overtime.

On the day in question the claimant was available and willing to perform the service which Carl Canterbury performed.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

I am agreeable to settling this claim on a non-prejudice, non-precedent basis for 8 hours at pro rata rate, as indicated in your letter of April 23, 1959."

A claim was filed for 5 men for 2'40" punitive time each. It was compromised by paying 3 men 2'40" pro rata each. Likewise the case covered was simply a compromise to dispose of an individual case. This is fully supported by the vice president-personnel's letter to the general chairman dated March 27, 1961:

"Our conference March 13, 1961, regarding claim of Carman G. E. Gilley, Armourdale, Sept. 28, 1960:

On basis of further data I have received, I am agreeable to settling this claim for 9 hours' pay at pro rata rate.

Please advise."

The general chairman replied March 30, 1961, as follows:

"With reference to your letter of March 27, 1961, File L-127-915, regarding claim of Carman C. E. Gilley, Armourdale, Sept. 28, 1960:

I will accept your offer to settle this claim by allowing claimant 9 hours pay at pro rata rate. Please advise when payroll will be adjusted."

Quite clearly these 3 compromise settlements have no precedent value as constituting an interpretation of the agreement.

The foregoing clearly establishes that this claim is entirely without merit. It has been proven the interpretation the Organization seeks to place on the rule cannot be supported. It has not been refuted that overtime still could be equalized which is the purpose and intent of the rule. Instead the organization is seeking to establish a practice requiring "meticulous compliance" with a "precise formula" which the board has said is not to be found in such a rule. The claimant was in no way damaged and there is no penalty provision in the agreement. This 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.

The Carrier maintains both a Car Shop and a Locomotive Shop at Silvis, Illinois.

In a letter dated November 21, 1961, the Carrier's Assistant Master Mechanic at Silvis advised the Carmen's Local Chairman that no Painters would work on Thanksgiving Day, November 23, 1961.

On November 22, 1961, the Claimant, Carman Painter D. E. Daniels, worked as a Painter on a Diesel Unit in the Locomotive Shop.

On Thanksgiving Day the Carrier used Carman Painter Carl Canterbury to finish painting the Diesel Unit on which the claimant had worked on November 22, 1961.

At Carrier's Silvis facility there are two groups of Painters, those assigned to the Back Shop, which is in the Locomotive Shop; and those assigned to the Rip Track, which is in the Car Shop. The Claimant was a Rip Track Painter whereas Mr. Canterbury was a Back Shop Painter.

Rule 10 of the controlling Agreement reads as follows:

"When it becomes necessary for employes to work overtime, they will not be required to lay off during regular hours to equalize the time.

Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. The distribution of overtime will be handled by local committee of the craft."

The Organization contends that the Claimant was available and willing to work on November 23, 1961; that the Carrier failed to contact the Local Committee; and that the Carrier's action violated the controlling Labor Agreement.

The Carrier contends that on November 22, 1961, when it learned a Painter would be needed on Thanksgiving Day, "all the Painters assigned to the Locomotive Department were contacted and Mr. Canterbury was the only one who was available and willing to work on November 23, 1961".

On November 21, 1961, when the Assistant Master Mechanic wrote the Local Committee that no Painters would work on Thanksgiving Day, the Carrier, in fact, gave recognition to the Local Committee's rights and function in the instant case. Consequently, the Carrier's action — in directly canvassing the Back Shop Painters on November 22nd to secure the services of a Painter for Thanksgiving Day — must be considered a violation of Rule 10.

In the record the Carrier states "the regular Carmen-Painter forces in the Ramp and in Back Shop were solicited for the purpose of working on the holiday * * *" (Emphasis ours). As the Claimant is a Rip Track Painter, he obviously, based on the Carrier's own language, *supra*, was not contacted or canvassed by the Carrier.

Accordingly, in view of the facts set forth above, we must rule in favor of the Organization and sustain this claim for eight hours' pay but at the pro-rata rate.

AWARD

Claim sustained at the pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1964.