

**Award No. 4738**

**Docket No. 4575**

**2-SLSW-CM-'65**

**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:**

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** 1. That under the rules of the current agreement, the Carrier arbitrarily denied the following named employees of the Carmen's craft holding seniority at Illmo, Missouri: C. H. Young, B. A. Dambach, Frank Keesee, and D. C. Eifert, their contractual right to work from August 22 through September 6, 1962, when work was performed by employees from another seniority point, namely, Pine Bluff, Arkansas.

2. That accordingly, the Carrier be ordered to compensate the above named employees in the amount of 206¼ hours at straight time rate, the equivalent of compensation earned by other employees for above indicated period.

**EMPLOYEES' STATEMENT OF FACTS:** Carmen C. H. Young, B. A. Dambach, Frank Keesee, and D. C. Eifert, hereinafter referred to as claimants hold seniority at Illmo, Missouri, with the St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier. Carman Young's seniority date at Illmo is March 31, 1937; Carman Keesee's, March 2, 1949; Carman Dambach's, August 2, 1947, and Carman Eifert's, December 16, 1954. Claimants were all regularly assigned at Illmo when effective July 22, 1957, all carmen's assignments were abolished, furloughing the fourteen carmen who remained after previous drastic reductions at that point.

At the time of the abolishment of all mechanic's assignments at Illmo, all repairs that could possibly be so handled were diverted either to East St. Louis, Illinois or Pine Bluff, Arkansas, with two mechanical foremen left at the point taking care of repairs and inspection that were necessary. Several years later both mechanical foremen were transferred, and the road trip truck, equipped to handle repairs from rebrassing journals to putting in wheels, which has been put into operation at Malden, Missouri after the abolishment of all mechanic's assignments at Illmo, had its territory for road service out of Malden extended to include Illmo.

On August 21, 1962, the general chairman of the carmen's organization learned that carrier was preparing to send four carmen from its Pine Bluff

## II

right to the work in question, in any event the claimants would not be entitled to payment for service performed for which they were not available or when they were otherwise employed. Claimants C. H. Young, B. A. Dambach and Frank Keesee had transferred to Malden. Young and Dambach were regularly assigned and Keesee worked extra (135 days in 1962). They had moved their homes to Malden and were on the seniority roster of carmen at Malden.

Young and Dambach held seniority at Malden, were working at Malden and were not available for work at Illmo. Keesee also held seniority at Malden and worked extra there and was not available for work at any other point during a portion of the time involved.

One claimant, D. C. Eifert, did not transfer to Malden; however, after being cut off in July, 1957, he subsequently worked for a contractor and at the time of the claim was away from Illmo on a construction project. There was work as carmen available to him. Several carmen with dates subsequent to 1957 were employed at E. St. Louis. Some 40 carmen with seniority dates subsequent to 1957 and prior to August, 1962, appear on the current Pine Bluff seniority roster. Claimant Eifert made no application to transfer to another point either for regular or irregular work, and it is obvious his service could not have been secured at Illmo for a few days work.

## III

In conclusion, carrier respectfully submits that the facts outlined show the claim is not supported by the agreed rules and 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.

Five years after closing the repair facilities at Illmo, 125 miles south of East St. Louis, and discontinuing the inspection and repair force there, the Carrier found it necessary to use some of the tracks at Illmo and elsewhere for the hurried modification of tie-down equipment on 183 multi-level 85 foot cars, which was necessitated by a model changeover at the Chevrolet plant at St. Louis. This work would normally have been done at East St. Louis, a few cars at a time, but had to be completed in about three weeks.

As it required about three miles of tracks to hold these cars, and the East St. Louis repair tracks were insufficient, yard tracks at Illmo were used as shop tracks for sixteen days, during which each of four carmen from Pine Bluff, Arkansas, 277 miles away, performed 96 straight time hours and 73½ overtime hours or a total of 169½ hours, averaging over 10½ hours per day.

Payment of the Pine Bluff carmen was made under Rule 7 as emergency road service.

While this was emergency work, it was not emergency road service, which

means necessary repairs on the road, away from repair shops.

It actually constituted emergency shop work, to prepare the cars for their regular use, and for all practical purposes tracks at Illmo and elsewhere became emergency shops for the job.

The Agreement provides for point seniority. Rule 19-1 permits men laid off on reduction of forces to transfer to other points where needed, in order of seniority with the privilege of returning to home station when the force is increased there.

Rule 12-3 provides in part:

"Vacancies of less than thirty days duration shall be considered temporary and may be filled without advertisement. Senior employees will be given preference in filling temporary vacancies."

At the time involved in this claim there were eleven carmen with Illmo seniority. Omitting two who had become foremen and four who were on sick leave or receiving R.R.B. disability pay, the respective seniorities of the Claimants were as follows:

Young 1st; Dambach 2nd; Keesee 3rd; and Eifert 5th.

Their status at that time was as follows: Young and Dambach, carmen at Malden, 65 miles away; Frank Keesee extra carman at Malden; Eifert, furloughed and working elsewhere.

In this state of the record Claimants Young, Dambach and Keesee were entitled to the refusal of three of these temporary positions under Rule 12-3, and not having been accorded that right, each of them should be compensated for 169½ hours at straight time rate for the period August 22nd to September 6, 1962, less earnings actually received for that period. Pay for time not worked is at straight time rate.

#### AWARD

Claim 1, sustained as to Claimants Young, Dambach and Keesee; and denied as to Claimant Eifert.

Claim 2, sustained as to Claimants Young, Dambach and Keesee, for compensation for 169½ hours at straight time rate for the period August 22nd to September 6th, 1962, less earnings actually received for that period; and denied as to Claimant Eifert.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.