

Award No. 5057

Docket No. 4894

2-GN-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Carrier violated the rules of the current agreement when they changed the assignments of Sioux City Carmen H. Amland, D. Allner, J. Barnes, C. Hacker, G. Giles, R. Iddings, D. Rygh, F. Watkins, K. Grevillius, L. Cannon, J. Johnson, P. Pumputis and N. McAllister.

2. And accordingly we request that:

a) Carrier restore the aforementioned employees to their former work week prior to August 8, 1963 when all car inspectors' positions were abolished;

b) Additionally compensate these claimants, hereinbefore mentioned, at the straight time rate for having been deprived of their right to work a day other than Sunday retroactive to August 8, 1963, in the amount of 8 hours at the straight time rate of pay;

c) and, additionally compensate these claimants at overtime rate for service they were required to perform on each Sunday retroactive to August 8, 1963.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains car department facilities at Sioux City, Iowa. Carmen H. Amland, D. Allner, J. Barnes, C. Hacker, G. Giles, R. Iddings, D. Rygh, F. Watkins, K. Grevillius, L. Cannon, J. Johnson, P. Pumputis and N. McAllister, hereinafter referred to as the claimants, maintain seniority as carmen on the carmen's seniority roster located at the point of Sioux City, Iowa.

decisions has been limited by law or some clear and unmistakable language in the collective bargaining agreement.

2. The organization bears the burden of producing positive evidence to prove that the carrier acted wrongfully when it effected the disputed changes in the workweek assignments of the thirteen claimant carmen. It has failed to carry this burden.

3. The organization's argument that the carrier acted in violation of Schedule Rule 11(j) is unsound and completely invalid because it assumes a non-existent set of facts.

4. Carmen mechanics have been needed and continuously and regularly assigned to perform car inspection and running repair work at Sioux City on Sundays since long before September 1, 1949. Schedule Rule 11(j) specifically recognizes the propriety of such action.

5. It is of no relevance whatsoever that the carmen mechanics regularly assigned to work at Sioux City on Sundays immediately prior to August 8, 1963, were commonly referred to as "car inspectors". The men so referred to were still "carmen" in the full sense of the word, and the carrier was free to assign them the full range of duties normally performed by carmen at Sioux City on Sundays — mainly car inspections and running repairs.

6. Language in the parties' schedule agreement furnishes ample evidence of the fact that a so-called "car inspector" is nothing more than an ordinary carman mechanic.

7. By admitting that so-called "car inspectors" have been continuously assigned to work at Sioux City on Sundays since before September 1, 1949, the Organization has clearly acknowledged the fact that the Sioux City Car Department's operational requirements have necessitated the employment of carmen mechanics seven days a week.

8. Numerous awards of this division recognize that it is the necessity for the performance of work on Sunday — not the job titles of those assigned to perform the work — which is the determining factor in deciding whether rules like Schedule Rule 11(j) have been violated.

For the foregoing reasons, the carrier respectfully requests that this claim 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.

Carrier did not violate Rule 11 (j) by its assignment of thirteen claimant carmen between August 1 and September 4, 1963.

The claim was instituted by the employees and they had the burden to prove a violation of the applicable rules of the current Agreement; from the record, they failed to do this. Accordingly, the claim must be denied.

AWARD

Claim denied.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1967.