

Award No. 5225
Docket No. 5003
2-CRI&P-BK-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Blacksmiths)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement between the dates of September 22 and 29, 1964 the Carrier improperly assigned employees in the Carmen Craft to cut, heat and bend metal for 480 stake pockets to be applied to piggy-back freight cars.

2. That accordingly the Carrier be ordered to compensate Blacksmith Helper Antonio Cericola, advanced to Blacksmith, sixty (60) hours at time and one-half his applicable rate of pay during the period of September 22 through 29, 1964.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad, hereinafter referred to as the Carrier, maintains a large freight and passenger car shop at 49th Street, Chicago, Illinois, for the repairing of cars, including a blacksmith shop to perform the work of the Blacksmith Craft covered by Rule 78 of the controlling agreement.

Blacksmith Helper Antonio Cericola, hereinafter referred to as Claimant, is regularly employed by Carrier in its 49th Street Shop and working as a set-up helper performing blacksmith work and receiving blacksmith rate of pay. Claimant is regularly assigned to the first shift Monday through Friday, Saturday and Sunday rest days. Claimant was assigned to take his annual vacation September 14 through October 2, 1964. His position was not filled and no request made for a vacation relief employee.

On or about September 22, 1964, repairs were started on piggy-back freight cars, which required the making of 480 stake pockets from ½-in. by 15-in. by 15-in. plate metal. Work required in the making of the stake pockets was cutting, heating in furnace and shaping and bending with bulldozer or press. The completed stake pocket being 5-in. by 15-in. by 15-in. long.

permit, senior employees must be permitted to select vacation dates in keeping with their desires and preferences during the vacation year, which extends from January 1, to December 31."

In the instant case there were no service requirements which necessitated that the claimant not be allowed his vacation in keeping with his desires and preferences. Yet, the Organization here is arguing that if one item of craft work occurs during a man's vacation period such becomes a requirement of the service so as to compel the Carrier not to let the man go on his vacation or, indeed, call him back from his vacation in order to perform this work.

Obviously, such a construction would not only completely defy the primary objective of the Vacation Agreement, but would wreak complete havoc. Nobody could plan a vacation with certainty. Yet that is what the Organization apparently is asking here (from General Chairman's letter dated February 23, 1965 — Carrier's Exhibit F):

"It is noted you base your decision due to the Claimant being on vacation during the claim period and you say he was not available nor was he damaged.

The Controlling Agreement provides for vacation periods to be changed under certain conditions **if there is an emergency**. The Agreement also provides for an employee to work his vacation period and be compensated accordingly, **if it should be necessary to do so**, in line with the Carrier's operation.

The claimant was not called and he was damaged when his work was assigned to another craft." (Emphasis ours.)

The facts are there was no emergency nor was there a necessity for this man to work his vacation period. He was not damaged in any manner.

See Award 10963 (Dorsey), Third Division (Supplemental) and related awards with regard to damages.

Further, many Awards of this Division on this property have stated, when a man is actually damaged, the proper payment is pro rata rate for time not worked.

All matter contained herein has been the subject of correspondence or conference between the parties.

Oral Hearing is not requested.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 present claim stems from the use of carmen rather than a blacksmith to make 480 stake pockets out of plate metal in connection with piggy-back freight car repairs.

It is undisputed that on September 22, 23 and 29, 1964, carmen were called up to perform a total of sixty hours making the stake pockets which involved cutting, heating in furnace and shaping and bending with a bull dozer press. That such work belongs to the blacksmith craft is equally clear. No exceptional circumstance has been brought to our attention that justifies crossing craft lines in the present case. The fact that Claimant, an advanced blacksmith helper at the location in question, was on his annual vacation from September 14 through October 2, 1964, provides no basis for Carrier's action. His position was not filled during his vacation and no attempt was even made to call him or any other member of the blacksmith craft. We accordingly find that Carrier has violated Rules 28(a) and 78 by using carmen to discharge blacksmith functions.

We do not subscribe to Carrier's theory that the second part of the claim must be denied. There is no penalty involved here. The blacksmiths lost sixty hours of work as the direct result of Carrier's violation in crossing craft lines. Claimant, though on vacation, was available for the work and it should have been assigned to him.

Under the circumstances and in line with Article I, Section 4 of the August 21, 1954, Agreement, the claim will be sustained in its entirety. We will not engage in mere conjecture to determine whether or not Carrier could have reduced the monetary claim if it had recalled Claimant to work. The plain unalterable fact is that Claimant was not called and Carmen were used to perform his work.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.