Award No. 5894
Docket No. 5638
2-CRI&P-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 6, RAILWAY EMPLOYES' DEPARTMENT, A.F.L.-C.I.O. (CARMEN)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: Claim of Employes:

(1) That under the current Agreement Mr. Ivey, Road Foreman of Equipment and Mr. Plaster Car Foreman were improperly used to perform Carmens work on April 28, 1967 at the scene of a derailment near Saginaw, Texas.

(2) That accordingly the Chicago, Rock Island and Pacific Railroad hereinafter referred to as the Carrier, be ordered to additionally compensate J. F. Turpon and L. Evans Four (4) Hours each at the time and one half rate.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains at Fort Worth, Texas facilities for repairing and inspecting cars and a force of about twenty Carmen. The carrier also has a truck stationed at Fort Worth, designated as a wrecking truck, with an operator and three crew members, all carmen, assigned by bulletin. This truck and the assigned crew are recognized by the carrier and the employes as being a wrecking outfit and crew as referred to in rule 114 of the agreement.

On April 28, 1967, about one mile North of Saginaw, Texas a loaded coal car broke a journal and derailed. The wrecking truck was called from Fort Worth, Texas and was accompanied by the assigned crew and operator. Also accompanying the truck were Mr. Ivey road foreman of equipment Mr. Ivey and Mr. Plaster car foreman. Upon arriving at the scene of the derailment a skid was placed under the derailed end of the car and the car was skidded to a siding track where it was rerailed. Mr. Ivey and Mr. Plaster worked with the wrecking crew rerailing the car, performing the same work as the three crew members.

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.

The agreement effective October 16, 1948, as subsequently amended, is controlling.

"Also, as we have stated before, the statement that three men were not sufficient to handle the skid is a reflection upon the men involved and not the Carrier's judgment in assigning three men to the wrecker, particularly in view of the fact that this skid has consistently and historically been handled expeditiously by three men."

Finally, the carrier would point out to your board that although the organization has claimed four hours at punitive rate for each claimant in this dispute, if this claim is not to be denied on the basis of the disputed facts in the record or on its own merits, the payment should be computed at the pro rata rate. In this respect, see Second Division Awards 2385 and previous settlements on this property cited already above by the carrier.

CONCLUSION

In conclusion, the carrier states that the claim of the organization is without support 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.

For one thing, the prohibition against foreman performing mechanic's work, as set forth in Rule 28(a) of the Shopcrafts Agreement, is clear and unequivocal. For another, the employees' statement (Exhibit A) that Road Foreman Ivey and Car Foreman Plaster "helped to rerail the car, handling wooden blocks, wedges, operated ram, using pull jacks, bars and other tools" and that Car Foreman Plaster "helped to carry the skid and put it under the car", stands unrefuted.

Then too, not a shred of evidence has been offered by the Carrier to lend credence to the view that the supervisors' activities were, in effect, appropriate aspects of their supervisory functions, and, as such, perfectly consistent with the meaning and intent of Rule 28(b).

It matters not that the regularly assigned wrecking crew were dispatched from Fort Worth to the vicinity of Saginaw, Texas to rerail loaded coal car WAB 11812, and that they were adequately staffed and fully competent to handle this task. The fact remains that by involving themselves in the performance of carmen's work, the supervisors intruded upon work elements uniquely preserved, by Rule 114, to the carmen's craft. See Award No. 1298, NRAB, Second Division.

The pro rata rate, and not time and one-half, is the proper penalty for loss of work. See Award No. 2385, NRAB, Second Division.

AWARD

Claim sustained for four hours at the applicable pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

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