

Award No. 6187
Docket No. 6031
2-MP-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 117 and 26(a), when Carman Helper was assigned to perform carman mechanic's work at Lemine, Missouri on July 23, 1969.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman D. W. Easterling in the amount of eleven hours (11') at overtime rate for July 23, 1969, account he was available and should have been assigned to perform this work.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a Cline Truck at Kansas City, Missouri, which is used to make repairs to cars on line of road. Carman C. C. Garvin is the regularly assigned Cline Truck Operator, work week Monday through Friday, rest days Saturday and Sunday, hours 7:00 A.M. to 3:30 P.M., and on Wednesday, July 23, 1969, Carman Garvin and Car Helper John W. Shrover, assigned work week Saturday through Wednesday, rest days Thursday and Friday, hours 7:00 A.M. to 3:00 P.M., were sent to Lemine, Missouri, which is located eight (8) miles west of Booneville, Missouri, to change a pair of wheels on tank car GATX 22318. They left Kansas City at 8:30 A.M., July 23, 1969, returning that evening at 7:30 P.M. Car Helper Shrover worked on one side of the truck while Carman Garvin worked on the other and Car Helper Shrover removed cotter key, springs, journal bearings, key bolt wedges, performing work coming within the classification of work of carmen—not helpers, and to substantiate this fact the Employees herewith quote statement signed by Cline Truck Driver Garvin, dated September 19, 1969:

"Kansas City, Missouri
September 19, 1969

TO WHOM IT MAY CONCERN:

On July 23, 1969, Carman Helper John W. Shrover and I were sent to Lemine, Missouri to change a pair of wheels on tank car GATX 22318.

It is interesting to note that claims were filed on behalf of helpers during this period on the theory that the agreement was violated when a mechanic performed work formerly performed by a helper. See, for example, Award 4392. These claims were denied, but the awards do give illustrations of work which may be performed by a helper.

As the manpower shortage became more acute during the Korean War and the conflict in Southeast Asia, the carrier was not able to employ a sufficient number of mechanics and apprentices to perform the work. The carrier again resorted to employing helpers, thereby relieving the manpower shortage in some small degree.

As helpers were employed, they were again assigned to assist or help mechanics. One of the tasks to which helpers were assigned on repair tracks was to help a carman change out wheels. Carman Helper Shrover was sent out with a mechanic on road trips, following the practice of past years when helpers were employed.

Carman Helper Shrover had made several road trips without objection on the part of the employees. This claim was apparently presented because overtime was necessary, as well as the nature of the work performed.

As in the case of changing wheels on a repair track, the helper who was sent with the mechanic to Lemine to change the wheels assisted the carman in performing the task following the mechanic's instructions. This requires the helper performing the same work on the opposite side of the car, following the mechanic's instructions at each step of the process of jacking the car, removing the brass and wedges and finally rolling out the old pair of wheels, following which the process is reversed in installing the new pair of wheels. The helper at all times is following the instructions of the mechanic and is helping him to perform the task of changing the wheels. It is the duty of a helper to assist a mechanic, and a helper is not performing mechanic's work in violation of Rules 26(a) and 117 when the helper assists the mechanic.

For the reasons stated, there has been no violation of the rules cited by the employees, and the claim should be denied. We also point out that there is no basis for the monetary claim in any event. If two mechanics were to be used, two mechanics on duty would be sent, and not the claimant, who was first out on the overtime board. There is no basis for the claim on behalf of Carman Easterling and, in any event, the claim is for work not performed and can be for no more than the straight time rate.

For the reasons stated, the claim is lacking in merit, and is not supported by the Agreement 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 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 organization contends that Carrier violated the Agreement when it permitted Carman Helper John W. Shrover to perform the work of a Carman on July 23, 1969 at Lemine, Missouri, when said Helper removed cotter key, springs, journal bearings and key bolt wedges. The Organization further contends that Carman Helper Shrover worked on one side of a car performing mechanic's work, the same work as Carman Garvin, who worked on the other side of the car.

The Organization's position is that Carrier violated Rule 117 and 26(a) of the Agreement.

The pertinent part of Rule 117 provides as follows:

"RULE 117.

CARMEN CLASSIFICATION OF WORK

Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, painting, upholstering and inspecting of all passenger and freight cars, both wood and steel, * * * and in all other work generally recognized as carmen's work."

Rule 26(a), the pertinent part thereof, reads as follows:

"RULE 26.

ASSIGNMENT OF WORK

(a) None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, * * *"

Carrier's position is that a Carman Helper in this instance simply helped a mechanic change a pair of wheels in accordance with the well-established practice for performing such work; that the most efficient method for changing a pair of wheels is to use two men, one on each side of a car and working as a team; that the Helper at all times is following the instructions of the mechanic and is helping him to perform the task of changing the wheels; that there is no basis for the claim, and, in any event, the claim is for work not performed and can be for no more than the straight time rate.

Carman Garvin made the statement that:

"Carman's Helper Shrover worked on one side of the car while I worked on the other side and he performed the same identical work that I did, that is, removed cotter key, springs, journal bearings, key bolt wedges and other work of a carman mechanic."

Carrier does not dispute the fact that Carman Helper Shrover worked on one side of the car while Carman Garvin worked on the other side. Further, Carrier does not dispute the allegation that the Carman Helper performed the same identical work as the Carman.

In Award No. 1486, this Board in dealing with an analogous and similar situation as is confronting this Board in the instant claim, stated:

"It cannot be questioned, of course, that any work spelled out in Rule 129 may properly be performed by carmen helpers. We think it is clear, also, that such residuary clauses as 'employees regularly assigned to help carmen and apprentices' and 'all other work generally recognized as carmen helpers' work' do not authorize carmen helpers to perform work which has been assigned to carmen by Rule 127.

The repairing of freight car trucks is carmen's work. The removal of cotter keys, brake shoe keys, brake shoes, pins, brake levers, bottom brake rods, truck springs, spring planks, and all other such work, is carmen's work, which a carman helper may not properly perform whether working alone, with, or opposite a carman. Helping a carman does not mean that a helper may do a carman's work. The work a helper may do in helping a carman is such unskilled work as is necessary in expediting the work of a carman, such as lifting or lowering heavy parts, pulling or pushing in removing or assembling parts, performing unskilled and common labor in furthering the work of the carman, jacking and blocking up of cars or parts thereof, and such other work as is spelled out in Rule 129. See Awards 1273, 1174. We think Rule 129 authorizes a helper to use a hammer or sledge in assisting a carman in straightening metal parts and in connection with a carman's use of a chisel, side set, back out punch, and the like. But it does not follow that a carman helper can do the skilled work of a carman mechanic even though he may work under his direction."

Further, as was said by this Board in Award No. 1273:

"Substituting carman for machinist, then what was said by this Division in Award 1174 is applicable here. Therein we said: 'If as alleged: * * * A Machinist is assigned to work on one side of the car * * * and a Machinist Helper is assigned to work on the opposite side of the Machinist, using identical tools as used by the Machinists and performing the same identical work as performed by the Machinist * * *', such an arrangement would constitute a violation of the agreement."

Therefore, we find that Carrier violated the Agreement by permitting a Carman Helper to assume the duties of a Carman on the date in question. However, we will sustain the claim at the pro rata rate rather than at the overtime rate, inasmuch as this Board has repeatedly held that the overtime rate is applicable only to time actually worked. See Awards Nos. 2956, 5702, 5299 and 5166.

AWARD

Claim sustained in accordance with the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1971.

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