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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6359  
Docket No. 6150  
2-IT-CM-'72

The Second Division consisted of the regular members and in addition Referee Irving

Parties to Dispute: ( System Federation No. 154, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Illinois Terminal Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the Carrier improperly assigned regular Carman Roy Yages to assist Painters in performing their work on November 18 and 19, 1970.
2. That accordingly, the Carrier be ordered to additionally compensate Painter P. L. Nolan in the amount of eight (8) hours at the time and one-half rate for November 18th, and four (4) hours at the time and one-half rate for November 19th, 1970.

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 claimant was regularly employed as a painter and was on the seniority roster under the heading of, PAINTERS. On November 18 and 19, 1970, a carman who was not regularly employed as a painter was assigned to assist the painters by preparing the surfaces of a caboose for painting; on November 18, 8 hours were worked and on November 19, 4 hours were worked. Exhibit B of employee's submission does not list painter helpers on the seniority roster, and the carman assigned to assist the painters appears on the roster for SET-UP CARMEN.

Rule 31, of the Agreement establishes the seniority of employees by crafts in the district under consideration. In so doing Rule 31 subdivides the Carmen seniority so that Painters appear as a separate heading. Rule 124 of the agreement refers specifically to the work of painters. Rule 126 of the Agreement relied upon by the Carrier refers to the use of carmen helpers.

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The carman assigned to assist the painters was not a carman helper. The claimant was available to perform the work. Upon reading Rule 31, Rule 124, Rule 126 and the Seniority Roster together, it is clear that the work in question belonged to the painters or possibly to a painter's helper but not to a carman on a separate or different roster. Second Division Award 1269 is an emphatic precedent in stating that, "Work embraced within the scope of an agreement cannot be removed therefrom and assigned to employees not subject to its terms.---even---if it becomes necessary for the carrier to call employees subject to the terms of the agreement and working them on an overtime basis." The axiom that contracts must be adhered to is expressed in Second Division Awards 1516, 3406, 3128, 4679 and others.

However, as stated in Award 3128, and Second Division Award 2956, it is firmly established that the pro rata rate is the proper rate of compensation for work not performed; the overtime rate is applicable only to time actually worked, the pro rata rate is the measure of value of work lost.

A W A R D

Claim is sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July, 1972.