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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6385
Docket No. 6246
2-B&O-MA-'72

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

Parties to Dispute: (System Federation No. 30, Railway
(Employees' Department, A. F. of L. - C. I. O.
((Machinists)
(
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

That under the controlling agreement, the Baltimore and Ohio Railroad Company, damaged Motor Car Repairman (Machinists) L. L. Noel, of the Akron Division, when they assigned Motor Car Repairmen (Machinists) R. A. Burtch, E. Cornwell and D. L. Carter of the Chicago Division to make repairs on Service Tie and Surface Unit #6 at Boughtonville, Ohio, on the Akron Division.

That accordingly the Carrier be ordered to compensate Claimant for the following dates at pro rata rate and time and one half rate as scheduled:

Dates:	S.T.	O.T.	Dates	S.T.	O.T.
Oct. 12-70	8 hrs.	1 hrs.	Oct. 26-70	8 hrs.	7 hrs.
" 13 "	8 "	7½ "	" 27	8 "	4 "
" 14 "	8 "	4½ "	" 28	8 "	3½ "
" 15 "	8 "	4½ "	" 29	8 "	3½ "
" 16 "	8 "	4 "	" 30	8 "	3½ "
" 19 "	8 "	3 "	Nov. 2-70	8 "	1½ "
" 20 "	8 "	1 "	" 3	8 "	2½ "
" 21 "	8 "	3 "	" 4	8 "	2½ "
" 22 "	8 "	3 "	" 5	8 "	
			" 6	8 "	3 "

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 employees 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.

The claimant is employed as a Motor Car Repairman with seniority on Carrier's Akron Division. During the period in question, October 12, 1970 through November 6, 1970 there were a total of three Motor Car Repairmen available for assignment on The Akron Division. During this same period there were two Tie and Surface Units working on the Akron Division: one in the Youngstown, Ohio area and the other about 113 miles away in the vicinity of Boughtonville, Ohio. During this same period claimant and one other Repairman carried on the Akron seniority list were assigned to the Tie Unit working at Youngstown while the third Repairman on the Akron Division list was assigned to the Tie Unit at Boughtonville. Also assigned to Boughtonville were three Motor Car Repairmen carried on the Chicago Division seniority list; these three men were rotated (one at a time) over the period in question. It should be noted that Boughtonville, Ohio is located approximately twelve miles east of the dividing point between the Akron and Chicago Divisions.

The Rule cited by the claimant provides in part:

Rule 28 "Seniority

Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments, except as provided in special rules of each craft
...."

Under this rule, claimant contends that the Carrier had no right to assign the three Motor Car Repairmen from the Chicago Division to work on the Tie Unit within the Akron Division, and that he was damaged by this assignment.

The Carrier maintains that Rule 9 is applicable:

Rule 9

"Temporary Vacancies.

Employees sent out to temporarily fill vacancies at an outlying point or shop, or sent out on a temporary transfer to an outlying point or shop, will be paid continuous time from time ordered to leave home point to time of reporting at point to which sent, straight-time rates to be paid for straight-time hours at home station and for all other time, whether waiting or travelling. If on arrival at the outlying point there is an opportunity to go to bed for five hours or more before starting work, time will not be allowed for such hours...."

The Carrier argues that "point" as used in Rule 28 would be the entire Akron Division and the Akron Division would be an "outlying point" for Chicago Division Motor Car Repairmen temporarily transferred under Rule 9, to work on the Akron Division.

There is nothing in the record to indicate the meaning of the terms "outlying point or shop" as used in Rule 9. By the same token, the term "point" as used in Rule 28 is further defined in that Rule for Maintenance of Way Department employees as Divisions (Rosters #11 and 12 for the Akron and Chicago Divisions respectively). A simple extension for the Carrier's position would permit the temporary transfer of employees on a system-wide basis ignoring the provisions of Rule 28; this was manifestly not the intent of the parties.

Nothing in this case challenges the right of the Carrier temporarily to transfer employees in appropriate instances; however, this right may not be exercised so as to abrogate the seniority rights provided in Rule 28. We are persuaded that in this case the Carrier did violate the provisions of Rule 28.

During the period covered by this claim, claimant worked all regular straight-time hours on the Tie and Surface Unit near Youngstown and was also paid for ninety-five (95) hours at time and one-half. Claimant requests compensation for 152 straight-time hours and sixty-two and one half hours at time and one half for the period in question. Since claimant suffered no monetary loss in this case and nothing in the agreement provides for penalty payments, we shall deny the claim for compensation.

A W A R D

Claim sustained in accordance with the opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1972.