Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7248
Docket No. 7077
2-LT-USWA-'77

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (United Steelworkers of America, A. F. of L. - C. I. O.
(The Lake Terminal Railroad Company

Dispute: Claim of Employes:

(1) That under the controlling Agreement, other than a qualified Speedswing Operator from the Car Repair Department was used to operate the Speedswing, to unload railroad car wheels on June 13, 1975, in violation of Rule 16(d).

(2) That accordingly, the Carrier be ordered to compensate Car Repairman D. Kepic, #1458, a qualified Speedswing Operator who was willing and available to perform the work in question, eight (8) hours pay at the time and one-half rate, in addition to all other earnings, as penalty for this violation.

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.

This dispute concerns use of a Maintenance of Way employee to unload wheels at the Diesel Shop. The Organization cites a violation of that portion of the scope rule which reserved "... any work connection with railroad cars..." and urges our consideration of Third Division Award 20703.

In the mentioned Award, the Referee noted that "...the assignment of a Car Repairman to operate the speedswing machine when performing work of the Car Repair Department was proper" and denied the claim of Maintenance of Way employees. But, that Award does not suggest that the Carrier urged that Car Repairmen had exclusive rights to the work in question.

We are aware that the prior dispute concerned a different shop than the one involved in this dispute, and we have considered the Awards cited by Carrier dealing with exclusivity. While this record is rather sketchy concerning the precise matters considered on the property, we have noted an employee affidavit which, we conclude, supports the Organization's conclusion of historical work performance. Although Carrier asserts that the same document supports its position, we are inclined to disagree.

We stress that this dispute is limited solely to this record, and to the evidence which we have reasonably available to us. We do not find, however, any basis in this record for awarding pay at the overtime rate. Thus, we sustain the claim for pro-rata payment.

A W A R D

Claim sustained, in accordance with the Findings, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of March, 1977.