

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Soo Line Railroad Company

Dispute: Claim of Employees:

1. Carmen G. W. Newhorter, J. A. Hein and P. E. Migas, Rhinelander, Wis. are claiming a total of 19 hours at time and one-half at ~~carmen's~~ rate of pay to be divided equally, because the Soo Line R.R. Co. violated Rules 94--28, Par. 1 and Rules 11--27--94 of Shop Craft Agreement, on Dec. 9, 1977.
2. Claim of 3 hour overtime is for violation of Rules 94 and 28, Par. 1, when Foreman, P. W. Denis assisted one carman in the changing of wheels on G. N. 76889.
3. Claim of sixteen (16) hours overtime is for violation of Rules 11--27--94, when Soo Line R.R. proceeded to have two carmen from Stevens Point, Wis. to come from one point to work at another point at Rhinelander, Wis. which is in violation of Point Seniority, to repair cars A.T.S.F. 47507, C.N. 576401 and G.N. 6750, all of which consisted of changing wheels.

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.

The record reflects that on date of December 8, 1977, two of the three Claimants, namely G. W. Newhorter and P. E. Migas, were dispatched to Medford, Wisconsin to rerail two locomotives. Upon their return to Rhinelander at 3:30 A.M., December 9, 1977, they left a note for the foreman, advising they were laying off account to get some rest and that they would be reporting to work at 10:00 AM, rather than at their starting time of 7:30 A.M. The third Claimant, J. A. Hein reported for work at the regular starting time of 7:30 A.M.

According to Carrier, on December 9, 1977 there were four cars awaiting repairs, specifically changing of wheels and that these repairs needed to be completed expeditiously. As a result, a Carrier foreman assisted Carman J. A. Hein in changing the wheels on one of the cars. At the same time Carrier summoned two Carmen from Stevens Point, Wisconsin, a separate seniority district from that of Rhinelander to assist in the repairs of the other three (3) cars. These two (2) Carmen worked on changing wheels and together put in a total of sixteen (16) hours work.

The Organization alleges Carrier committed two distinct violations of the Controlling Agreement bearing effective date of January 1, 1954, the first by permitting one of its foreman to engage in Carmen's work, and the second, by calling in two Carmen from another seniority district to perform the work of changing wheels.

Upon a close and careful review of the entire record, it is the judgment of this Board that the Organization's claim regarding the foreman working must be denied on the basis it was unable to meet its burden of proof by its failure to specify the exact duties performed by the foreman and too, to demonstrate these duties were exclusively those reserved to Carmen. As to the second part of the instant claim, the Carrier was not persuasive in its argument that the repairs were of an emergency nature requiring immediate attention and therefore in turn requiring the assistance of two Carmen from another seniority district. Carrier was informed by Carmen Newhorter and Migas that they would be reporting to work 2½ hours into their tour of duty. Thus, Carrier could have deferred the repairs on the remaining three (3) cars until the time of their arrival. We find, based on the circumstances of the instant case, that Claimants are entitled to pay at the pro rata rate for a total of eleven (11) hours rather than the sixteen (16) hours claimed. We arrived at this total by subtracting the first 2½ hours each Claimant was unavailable during his tour of duty on December 9, 1977.

A W A R D

Claim sustained in part as per Findings. Carrier is directed to pay Claimants eleven (11) hours of pay at the then prevailing pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of March, 1982.