

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company violated the controlling Agreement, in particular Rules 15, 26 and 100 when the Carrier contracted to Dixie Concrete Inc. to unload twelve gondola carloads of crusher run gravel in Waycross Shop during the latter part of March 1982.

2. That accordingly, the Seaboard System Railroad Company be ordered to pay Carmen C. A. Varnadore and H. H. Lee eight hours pay at the rate of time and one-half at the Carmen rate of pay.

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 employees 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.

On March 20 and 21, 1982 the Carrier contracted Dixie Concrete to unload 12 gondolas of gravel at the Carrier's Waycross Shop located in Waycross, Georgia.

The Organization claimed violations of Rules 15, 26 and 100. The Organization claimed that by rule and by practice unloading inside the Shop area has been Carmen's work. Crane work has been assigned to Carmen by bulletin. The Organization admits that the crane being used by the contractor was not on rails, however there was no mention of an emergency and the Carrier could have waited for its proper equipment to free up. The Carrier had control over this situation. The Organization noted that in their correspondence of record the Carrier's Director of Labor Relations states:

"Although Shop Superintendent Wood did have the option of using the company crane to unload these cars, there was certainly no compelling obligation on his part to do so."

The Carrier stated the practice of Carmen operating cranes is limited to on-rail cranes. The Carrier admitted that it does have control, but the crane in question was being utilized on two shifts and overtime at the scrap dock and therefore was not available. The Carrier stated the work was not reserved to any class of employees, and the Carrier did not have the proper equipment available. The Carrier argued the Organization must show exclusivity. There is no rule nor practice showing cranes are exclusive to the Carmen's craft and, in any event, the Carrier noted the Organization did not sustain the burden of proof in this matter.

Upon complete review of the evidence, the Board finds by the Carrier's own admission this work has historically belonged to the Carmen's craft. As stated by the Shop Superintendent, in the on-the-property handling, which states in pertinent part:

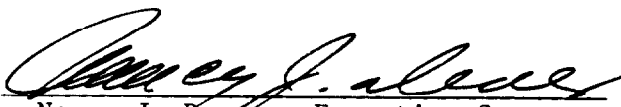
"...Carmen have historically been used to unload or load cars, if they are loaded or unloaded with mechanically operated on-the-rails crane."

The question before the Board is, did the Carrier have the obligation to assign this work to the Claimants. The Board finds this utilization of equipment was within the control of the Carrier. The Board is not unsympathetic to the Carrier's argument that the on-rail crane was needed elsewhere in the facility, however, there was no showing in the record that any emergency existed. Therefore, the on-rail crane could have been utilized to perform this work when the equipment became free. Contrary to the Carrier's argument that the Organization did not meet their burden of proof in this matter, the Board finds that they have by both rule and by practice and by the admissions of the Carrier's own executives. Therefore, the Claim will be sustained. The Organization asks for 8 hours at time and one-half for the two Claimants. The Board can find no precedent cited that would sustain the overtime payment, and therefore the Claim will be sustained for 8 hours for each Claimant at the straight time rate of pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1987.