

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13570

Docket No. 13394

00-2-98-2-82

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 2.1 when they allowed a Machinist to perform carman’s duties when he restenciled Locomotive HLCX 4051, changing identification to MEC 377.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Henry J. Satrowsky in the amount of five (5) hours pay at the overtime rate (\$120.98). This is the amount he would have been entitled had the carrier complied with our agreement.”**

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 were given due notice of hearing thereon.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

This claim arises from the Carrier's assignment of the work of restenciling a locomotive to a Machinist at the East Deerfield, Massachusetts, Car Shop on October 2, 1997, rather than to a Carman.

The Organization asserts that the work of painting locomotives, including stenciling is specifically reserved to the Carman craft by classification of work Rule 2.1(k) and has been exclusively performed by Carmen, and that the assignment on the date in question lasted five hours, and was the total assignment on the locomotive given to the Machinist.

The Carrier argues that it was within its rights to assign the stenciling work to the Machinist since it fell within the Machinist's Incidental Work Rule 34, which permits the performance of "other services associated with the . . . maintenance of . . . locomotives and incidental to a clean, safe and operational facility." It contends that if the Machinist worked on this job over four hours, he did so in contravention of his Supervisor's instructions not to work more than four hours.

A careful review of the record convinces the Board that the Carrier's assignment of the stenciling of the locomotive in question to a Machinist rather than a Carman was a violation of Rule 2.1(k), which specifically reserves that work to the Carman craft. The Carrier's assertion that this assignment is protected under the Incidental Work Rule is misplaced for a number of reasons. First, that Rule applies only to work which is incidental to the main work assignment. In this case the Carrier did not refute the Organization's assertion that the stenciling involved was the total work assignment, or show what other work assignment the stenciling was incidental to. Second, the Incidental Work Rule specifically requires that the work in issue be incidental to a "clean, safe, and operational facility."

The Carrier has not shown how a stenciling assignment changing a locomotive's identification fits within this parameter. Third, the Incidental Work Rule limits performance of the job to no more than four hours. The undisputed evidence reveals

that this assignment took five hours to perform. It is irrelevant that the Carrier only desired it to take four hours or less. The length of the job alone removes it from the purview of the Incidental Work Rule.

For all of these reasons we find that the Carrier violated Rule 2.1(k) of the Carman's Agreement by assigning the stenciling work in issue to a Machinist. The Organization did not show sufficient cause for payment of this claim at the penalty rate. Accordingly, the claim shall be sustained, but at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 14th day of November, 2000.