

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13770

Docket No. 13596

03-2-00-2-75

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of 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. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 2 when they arbitrarily assigned a Blacksmith to perform work that is historically and contractually recognized as Carman’s work.**
- 2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Mark E. Lawrence in the amount of two (2) hours and forty (40) minutes pay at the overtime rate. This is the amount he would have earned had the Carrier properly assigned this work.”**

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.

The dispute in this case concerns a September 24, 1999 assignment of Blacksmith D. Tuttle from 1230 to 1500 at the Waterville Paint Shop to assist Carman/Painter F. Curtis mask and paper a freight car in preparation for painting. The Carrier defends the assignment on ground that the work performed by Blacksmith Tuttle was incidental to his Blacksmith's work.

Except for the date, this is the same dispute decided by the Board in Second Division Award 13769. Because the Carrier has not shown that the work performed by Blacksmith Tuttle was incidental to his Blacksmith work and for reasons discussed in Award 13769, the claim has merit.

The Carrier points out that the Claimant was on vacation and asserts that he was unavailable for work and thus should receive no monetary relief. We disagree.

In Second Division Award 13768 we held that because Rule 17.9 ("... [i]f for any reason work is performed by an employee during vacation, it will be paid for at the applicable overtime rate in addition to the vacation pay") requires payment of overtime for work performed by employees who are on vacation, but further requires that work must be performed in order to receive that overtime pay, the Claimant - who did not perform the work - is entitled to compensation, but only 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 24th day of October 2003.