

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13951
Docket No. 13832
08-2-NRAB-00002-070020
07-2-20**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railway Company Division of TCIU
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 2.1, Rule 2.1 (m) and Rule 31.5, when they arbitrarily ordered a Carman out of Lawrence, ME (BM Territory) to re-rail at Merrills Terminal (MEC Territory) with a Supervisor, instead of allowing William Reinsborough and Richard Nickless to go.**

- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carmen Richard Nickless and William Reinsborough in the amount of two (2) hours at the overtime rate for each employee for a Carman out of Lawrence, MA and Supervisor Carves performing Carman duties at Merrills Terminal.”**

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 facts of the case are that on March 29, 2005, Supervisor Carves along with a Carman out of Lawrence, MA, went to Merrills Terminal in Portland, ME, where re-railing duties were performed, while the Claimants worked at their home location.

It is the Organization's position that the Carrier violated Rules 2.1, 2.1(m) and 31.5 when it improperly used a Carman who was outside of his territory and a Supervisor to do covered Carman work of re-railing at Merrills Terminal rather than using the Claimants who were ordered to work in the yard instead of sending them out to protect their territory. It also argues in its Submission before the Board that the Carrier offered a compromise offer of two hours overtime pay because it recognized that a Supervisor performed Carman's work which was declined because it failed to recognize that a Carman was also working out of his territory.

It is the position of the Carrier that a fully qualified Carman was used to re-rail the car in dispute on March 29, 2005, in accordance with the Rules of the Agreement. It further argues that Supervisor Carves was supervising the Carman and provided customary assistance to him which is the normal practice on the property. Additionally, it states that if there was any validity to the Organization's claim which there is not, there is no basis for claiming two hours pay on behalf of two Claimants because it only took one Carman to perform the work. Lastly, it argues there are no "territories" involved in this dispute because the only defined territories that are set forth in the Agreement, pertain to ground crews for wreck service (See Rule 30 Wreck Crew and Side Letter # 1 of March 1, 2003) which do not pertain to the re-railing of cars involved in the instant dispute. Simply stated

the Carrier contends that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement.

The Board has thoroughly reviewed the record and finds it devoid of any facts which support the Organization's arguments, as it provided no evidentiary support such as employee statements as to what work the Supervisor allegedly did. In addition there are no written statements or letters on the property confirming the de-novo allegation in its Submission that the Carrier recognized the improper usage of a Supervisor. Therefore, even though the work in issue may have been outside the scope of managerial authority we must deny the instant claim because of a lack of proof.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 23rd day of October 2008.