

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13994
Docket No. 13878
09-2-NRAB-00002-080028**

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

(Brotherhood Railway Carmen Division of TCIU)
PARTIES TO DISPUTE: (
(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(q), when they allowed two (2) supervisors to unload a trailer at 3:00 p.m. instead of having a Carman do this work.**
- 2. Accordingly, the Springfield Terminal Railway Company be required to compensate Carman Timothy Locke in the amount of 2.7 hours at the rate of time and one-half for a call while working after 3:00 p.m."**

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 at approximately 3:00 P.M. on March 21, 2007, the Claimant observed Supervisors T. Witham and S. Gigure undoing two straps on the back of a trailer at Waterville, Maine.

It is the Organization's position that the Carrier violated Rule 2 (q) which states, in pertinent part, the following:

"Other work generally recognized as Carman's work."

It argued that when the Carrier allowed Supervisors to unload a truck they were doing Carman's protected work. It further argued that Supervisors should supervise and not perform work that accrues to Carman by Agreement. It requested that the claim be sustained to protect the integrity of the Agreement.

It is the position of the Carrier that it did not violate the Agreement. It argued that on the date in question the two Managers undid two straps on the back of a trailer, after which they left the property. According to the Carrier this took less than a minute to perform. It further stated the Claimant witnessed the Managers undoing the straps, but he did not view them unloading the trailer because that never happened. Secondly, it points out that the Claimant never saw the Managers unloading the trailer because that was on his way home and left work. Furthermore, it argued that the Managers were also leaving work for the day at 3:00 P.M. when they were contacted by an Assistant Manager from the Locomotive Shop. Locomotive Shop employees work until 3:30 P.M. and needed to have a flat bed trailer that was loaded with various items including filters for locomotives, unloaded in a hurry because it had started raining. Supervisors Witham and Gigure stopped by the trailer on their way home, and hurriedly removed two ratchet straps that secured filters, so that a Locomotive Shop employee operating a forklift could unload them before they got wet.

Lastly, the Carrier argued that various other crafts such as the Machinists, Electricians, Laborers, Sheetmetal Workers, Blacksmiths, Boilermakers, and BMW employees have traditionally done the same work. It concluded by requesting that the claim remain denied.

The Board thoroughly reviewed the instant dispute and discovered there is nothing in the record which refutes the aforementioned Carrier Officer's statements that their combined "work" took approximately one minute. Additionally, there is no evidence which refutes the Carrier's statement that the subject trailer was unloaded by Locomotive Shop employees and not Supervisors. Likewise, there is nothing in the record which refutes the argument that other shop employees have historically done the same disputed work. Therefore, in this instance because the "work" at best was "de minimis" the Board finds and holds that the claim must be denied.

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 11th day of February 2009.