NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20564
THIRD DIVISION Docket Number CL-20380

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (GL-7391) that:

1. Carrier violated the Agreement between the parties when it failed to allow Elmer C. Olson, Truck Chauffeur, three (3) hours pay at the punitive rate to transport Damage Free crossmembers from the Burlington Northern Material Department, Brainerd, Minnesota, to the Pine River Manufacturing Company, Pine River, Minnesota, Wednesday, May 10, 1972.

2. Carrier shall now compensate Elmer C. Olson, Truck Chauffeur, three (3) hours pay at the punitive rate of his position.

OPINION OF BOARD: This Scope claim arises from the handling of company material, metal cross-members, by the employees of a customer of the Carrier on Wednesday, May 10, 1972. The cross-members, which are used to brace and block the load in a DF (damage free) car, are supposed to be left in the car after the car is unloaded at destination so that they will be available for the next loading of the car. The cross-members disppear from time to time and, for that reason, the Carrier keeps cross-members on hand for re-equipping the DF cars as necessary. On the claim date some thirty (30) cross-members were determined to be missing from DF cars furnished to a customer at Pine River, Minnesota. At about 2:00 PM the Agent at Pine River phoned this information to the Carrier's Material Manager at Brainerd, Minnesota, which is about thirty (30) miles from Pine River. The Manager informed the agent that no truck was on hand to deliver the thirty (30) cross-members, but that they would be delivered early the next morning. However, as the customer needed ten (10) cross-members to complete a car-Loading or loadings then in process, the customer had its employees pick up the ten (10) cross-members from Carrier's Material Department at 3:00 PM on the claim date. The remaining twenty (20) cross-members were delivered to the customers at 8:30 the next morning by one of the Carrier's Store Department truck drivers.

The employees say their Scope Rule was violated by the Carrier's action in permitting individuals not covered by the Agreement

to load the cross-members at the Carrier's Material Department and transport them to the Customer's Plant at Pine River, Minnesota. The employees also state that the only reason for the cross-members being handled in this manner was because the Carrier refused to deliver the Members on the claim date in order to avoid overtime payment to a truck driver.

It is clear from the record that the Carrier made a conscious decision to deliver the disputed material at pro-rata truck driver rates on the day following the claim date, rather than at overtime rates on the claim date. However, this appears to be a business decision of a kind which we presume the Carrier is required to make in innumerable instances. Certainly, there is no per se wrong involved in a decision against overtime payment and the instant record fails to show that such decision was contractually prohibited in this case. As for the material itself, the employees' correctly assert that the disputed members are company-owned property as contrasted with material transported by the Carrier but owned by others: however, this ownership facet is not especially pertinent because the intended use of the cross-members requires that they leave the possession and control of the Carrier at some point and pass into the possession and control of the user and loader of the DF car. We therefore believe the element of control is determinative of whether the handling of the material raises a question of Agreement coverage and, moreover, we believe it is inconsequential whether such control passes from the Carrier at its own Material Department or at the plant of the customer. In the confronting facts, the Carrier's control of the members ended when the customer's employees took possession of the members at the Material Department. Subsequent handling of the members was not work performed by or for the Carrier's benefit and we shall therefore deny the claim.

FINDINGS: The Third Division of the Adustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.