Award No. 10779
Docket No. MW-9827

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the agreement when it used Section Laborers W. T. Davis, T. Rice, and L. Hancock to rerail car NC&StL 48011 at Pinckneyville, Illinois, on October 18, 1956, for 3½ hours and failed and refused to allow them compensation at Carmen's rate.

(2) The Claimants identified in Part (1) of this claim be allowed the difference between Carmen's rate and Section Laborer's rate for 3½ hours account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The facts are as stated in Mr. Short's letter of December 19, 1956, in the following paragraph:

"There is no disagreement in connection with the services performed by claimants on the date in question when they were used for a period of 3½ hours to assist in rerailing car NC&StL 48011 at Pinckneyville, Illinois. They were allowed section laborers' rate of pay for performing this work."

The Agreement in effect between the two parties to this dispute dated August 1, 1950, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 28 of the effective agreement reads as follows:

"An employe assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

Claimants have been fully and properly compensated in accordance with the agreement and the Carrier requests that the claim be denied.

Without prejudice to our position in this case we here enter protest to the application of the Carmen's rate in any eventuality since if it could be determined claimants assisted carmen in performance of carmen's work, they could not logically be entitled to more than the carman helper's rate of pay.

(Exhibits not reproduced.)

OPINION OF BOARD: The Agreement in effect between the parties to this dispute is Agreement between the Missouri Pacific Railroad Company and Employes thereof represented by the Brotherhood of Maintenance of Way Employes, effective August 1, 1950.

The Claimants in this case are employed in the Maintenance of Way Department, Illinois Division, of the Missouri Pacific Railroad Company and were working as Section Laborers on the date of this claim, Thursday, October 18, 1956. Hopper Car NC & ST L 48011 had been derailed at Pinckneyville, Illinois and the services of two carmen and three sectionmen were used to rerail this car. The three sectionmen who are Claimants in this case were used to carry blocks and jacks and to perform only general manual labor incident to the rerailing of this car. A total of three and one-half hours were consumed in the performance of this work. Sectionmen did not at any time manipulate or assist in the manipulation of the jacks or other equipment used in the rerailing of this car.

There is no disagreement in connection with the services performed by Claimants on the date in question when they were used for a period of three and one-half hours to assist in rerailing car NC & ST L 48011 at Pinckneyville, Illinois. They were allowed Section Laborer's rate of pay for performing this work.

The Brotherhood contends that the work here performed by Sectionmen constitutes the performance of Carmens' work and that they are entitled to the difference between the Carmens' rate and the Section Laborer's rate for the three and one-half hours so used. The Brotherhood claims violation of Rule 28 of the effective Agreement which is as follows:

> "An employe assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

The Carrier maintains that this Board lacks jurisdiction to hear and determine this case and further that the services rendered could not be termed

performance of Carmens' work as this type of work is not excluded from the duties of Section Laborers by agreement or practice on this Railroad, nor is this work given exclusively to Carmen by agreement or practice on this Railroad.

Your Board finds from this record that the Carrier's contention with respect to jurisdiction is without merit.

In Award 4511 (Wenke) between these same two parties, concerning the same Rule 28, and with facts similar to those of this dispute, this Division held that:

> "As to the Carrier's contention that this Division is without jurisdiction under The Railway Labor Act, we find it to be without merit. Here recovery is sought under Rule 28 of the Brotherhood's Agreement. This Agreement is properly before us as the employes covered thereby are within those referred to in Section 3. First, (h) as coming within the jurisdiction of this Division. Rules of the Shop Craft (Carmen) Agreement are here used not for the purpose of determining the rights of any carmen thereunder, of which this Division does not have jurisdiction, but as evidence of the classification of the work here performed by these employes and the rate which Claimants seek recovery under the rules of their own agreement. For similar holdings see Awards 674, 1544, 1598, 2169, 3489 and 4139 of this Division."

Your Board further finds from this record and based solely upon the facts presented in this particular case, that the Brotherhood has failed to establish by a preponderance of the evidence that the Claimants performed any work in this instance outside of the Scope Rule of this Agreement, or that they performed any work belonging exclusively to Carmen, or that they are entitled to a higher rate under Rule 28 or otherwise.

It further necessarily follows that the Board finds this claim to be without merit.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.