Award No. 17173
Docket No. MW-17952

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it required Section Foreman J. T. Jones and Section Laborers F. L. Glandon, C. D. Farrell and L. A. Flactiff to perform car repair work on September 11, 1967 and refused to compensate them therefor under the provisions of Rule 45. (System file: 24-3/M-1232-67)

(2) Section Foreman J. T. Jones be allowed the difference between what he was paid at the section foreman's rate of pay and what he should have been paid at the car repariman foreman's rate of pay for eight (8) hours on September 11, 1967.

(3) Section Laborers F. L. Glandon, C. D. Farrell and L. A. Flactiff each be allowed the difference between what they were paid at section laborer's rate of pay and what they should have been allowed at the car repairman's rate of pay for eight (8) hours on September 11, 1967."

EMPLOYES' STATEMENT OF FACTS: On September 11, 1967, the claimants, together with Car Repairman Rader, were required to make repairs to a revenue car containing lumber which had shifted so as to make it unsafe for further movement. The work entailed unloading the lumber and then reloading and rebanding the lumber and finally applying new stakes to the car. All tools used in this work were those customarily used by car repairmen and the lumber was a revenue load and not Carrier owned material. Six (6) hours were consumed by each claimant in the performance of this work and claim was made that they should have been compensated in conformance with the provisions of Rule 45 which read:

> "An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. Except in reduction of force, the rate of pay of an employe will not be reduced when temporarily assigned by proper authority to a lower rated position."

Claim was timely and properly presented and handled by the Employes at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimant J. T. Jones in this dispute is a Section Foreman in the Ottumwa yards. Claimants F. L. Glandon, C. D. Farrell, and L. A. Flactiff are Section Laborers in the Ottumwa yards. On September 11, 1967, all four claimants rearranged a carload of shifted lumber on C&NW car 4786.

This claim is presented for the difference in section foreman's rate of pay and car repairman foreman's rate of pay on behalf of J. T. Jones. In addition, this claim seeks the difference in section laborer's pay and that of car repairman's rate of pay on behalf of F. L. Glandon, C. D. Farrell, and L. A. Flactiff. These higher rates of pay are sought on behalf of the claimants under the provisions of Rule 45 of the current agreement.

All four claimants in this dispute replaced, rebanded, and restaked lumber on flatcar C&NW 4786. The Organization alleges that this is car repairmen's work. The Carrier has maintained that the rearranging of shifted lumber is strictly laborer work.

OPINION OF BOARD: The facts are not in dispute, however, the interpretation placed upon them by the parties is the basis for the instant claim. On September 11, 1966, Claimants, under the direction of a Car Repairman, were required to unload lumber which had shifted on a revenue car, reload and reband the lumber and apply new stakes to the car. This work consumed six hours and, therefore, the Organization contends that the Claimants should have been compensated at the Car Repairman's rate, pursuant to Rule 45 of the effective Agreement, hereinafter quoted:

> "RULE 45—COMPOSITE SERVICE
>
> An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. Except in reduction of force, the rate of pay of an employe will not be reduced when temporarily assigned by proper authority to a lower rated position."

The Carrier declined the Claim on the ground that the work involved herein was laborer's work and not carmen. Additionally, the work performed did not require the craft skill of a carman, nor were carmen's tools utilized. Furthermore, the positioning and rearranging of the various bandings and wooden stakes did not require the services of a skilled mechanic.

True, a car repairman was assigned to supervise the work. However, the record is barren of any probative evidence as to what type of craft skill was employed by the Claimants or what tools were used by

them. In our view, the Organization has failed to support its contention that the Claimants were performing work of a higher classification.

FINDINGS: The Third Division of the Adjustment 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.