

Award No. 810

Docket No. 752

2-HB&T-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bruce Blake when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Coach Cleaner Hardie Lewis be paid for all overtime worked on April 20 and 21, 1941, at 54 cents per hour, under controlling Federal Regulations and Agreement.

EMPLOYEES' STATEMENT OF FACTS: Hardie Lewis, coach cleaner employed at Houston, is assigned to work eight hours per day, working from 11:00 P. M. to 7:00 A. M. He was called from his regular job at 1:00 A. M., April 19, to go out with wrecking outfit as cook. He worked through the night and until 10:30 P. M., April 20th. He was called to resume work at 4:00 A. M., April 21, and worked until 9:00 P. M., same day. He claimed time and one-half for working from 7:00 A. M. to 10:30 P. M., April 20, or 23¼ hours at .36. He also claimed time and one-half from 7:00 A. M. to 9:00 P. M., April 21, or 21 hours at .36. He was actually paid at .335 per hour for straight time for the pay-roll period and .50¼ per hour for the 28½ hours overtime, which payment was later changed to another formula.

POSITION OF EMPLOYEES: Prior to March 1, 1941, hourly rate of coach cleaners on the Houston Belt & Terminal Railway Co. was .335 per hour. Effective March 1, 1941, under the application of the Wage Order of the Wage and Hour Division of the "Fair Labor Standards Act of 1938" the minimum rate became .36 per hour.

Lewis made claim for shortage in his pay check and the matter was handled with master mechanic by local chairman of carmen. Claim of Lewis was declined by master mechanic. See Exhibit A.

The claim was appealed to the superintendent, claim being that inasmuch as the Wage and Hour Law established a minimum rate of .36 per hour, time and one half should be computed from that figure. Rule 13 section (b) provides:

"Regular assignments of eight (8), nine (9) and ten (10) hours will be made to suit the requirements of the service. Time worked beyond the regular assignment will be paid for at the rate of time and one-half on the minute basis." (Underscoring ours.)

by agreement with the organization. The Fair Labor Standards Act became a law in 1938. The attention of your Honorable Board is directed to carrier's Exhibit No. 1, which is copy of agreement between the Houston Belt & Terminal Railway Company and the Railway Employees Department of the American Federation of Labor, dated April 25, 1940, from which the following is quoted:

"It is further agreed that until changed in accordance with the provisions of the Railway Labor Act, rates of pay and rules governing working conditions as set forth in the current agreements between the Houston Belt & Terminal Railway Company and the Association of Shop Crafts in Mechanical Department for all classes enumerated in the certification of the National Mediation Board shall continue in effect with the following exceptions:"

All of the exceptions listed are in connection with the rules and do not in any way change the rates of pay in effect at the time the agreement was signed.

Under the agreement in effect just prior to April 25, 1940, the agreed to overtime hourly rate for coach cleaners was .5025 per hour. That rate had not been changed in accordance with the provisions of the Railway Labor Act at the time this claim was submitted under the agreement with the organization, and the rate having been in effect at the time the agreement was executed, remained unchanged.

The Fair Labor Standards Act is a law which, as stated before, became effective in 1938 and the agreement between the Houston Belt & Terminal Railway Company and Railway Employees' Department of the American Federation of Labor, submitted as carrier's exhibit No. 1, is dated April 25, 1940, thus it will be noted that the Fair Labor Standards Act was in existence at the time the Memorandum Agreement referred to above became effective and which provides that the rates of pay as set forth in the current agreements between the Houston Belt & Terminal Railway Company and the Association of Shop Crafts in the Mechanical Department for all classes enumerated in the certification of the National Mediation Board, which includes coach cleaners, shall continue in effect until changed in accordance with the provisions of the Railway Labor Act. The Fair Labor Standards Act is not referred to in this agreement, and, therefore, in so far as the agreement between the carrier and the organization is concerned, the Fair Labor Standards Act has no application. The carrier is required under the Fair Labor Standards Act to pay the employes the minimum hourly rate provided for in the Act by reason of the Act itself and not under the provisions of any agreements with the shop crafts organization.

It is the contention of the carrier that Hardie Lewis, coach cleaner, has been compensated for the service performed at the agreed to established rate with the organization under which agreement the claim was presented and that upon the evidence submitted by the carrier your Honorable Board is warranted in rendering an award sustaining the position of the carrier.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

All contracts are subject to change, modification and abrogation by legislation enacted under the police power inherent in the government. Congress is vested with that power in matters pertaining to interstate commerce. It

exercised it in enacting the Fair Labor Standards Act. It is our opinion that the order of the Wages and Hours Division made pursuant to that Act, fixing a minimum rate of pay at 36 cents per hour, raised the rate of pay under the controlling agreement to that amount as effectively as if the parties to the agreement had established that rate, through negotiation.

Claimant is entitled to be compensated for overtime and one and one-half times that rate, or 54 cents per hour.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1942.