

Award No. 2035

Docket No. 1841

2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That at the Atlanta Pullman Shops on November 25, 1953, The Pullman Company violated controlling agreement when one of their representatives failed to properly distribute overtime in the Electrical Department.

2. That Electricians E. K. Holiday and D. E. Irwin be compensated for the time that Electricians C. D. Settles and J. G. Hayes were assigned to work overtime on November 25, 1953, at the time and one half rate.

EMPLOYEES' STATEMENT OF FACTS: At the Atlanta Pullman Shops on November 25, 1953, it was necessary to work two (2) electricians on overtime to disassemble an A. C. motor for the bearings to be replaced. Shop Foreman Radden knew that the overtime was being handled from an overtime board but, for some reason, did not want the next two electricians who were next out for overtime on the job.

Electricians J. G. Hayes and C. D. Settles disassembled the A. C. motor and also a 1,500 amperes generator for the armature to be turned, which took them from 4:00 P. M. until 10:47 P. M.

The agreement effective July 1, 1948, as subsequently amended is controlling.

POSITION OF EMPLOYEES: That The Pullman Company violated the rule of the controlling agreement when one of their representatives failed to properly distribute overtime under Rule No. 36 and the Memorandum of Understanding signed by The Pullman Company and System Council No. 24; Rule No. 36 reading in part:

"Distribution of Overtime. All time worked outside of bulletined hours shall be distributed as equally as possible between the employes involved."

The foregoing portion of Rule 36 clearly states that all time worked outside of bulletined hours shall be equally distributed.

alleged violation of Rule 36 in that the Company did not assign the electricians next in line for overtime and requested that these unidentified electricians be paid 3:00 hours' overtime at time and one-half. In denying the claim, General Foreman B. C. Donnelly pointed out that Electricians P. W. Wischman and T. A. Stasney had been assigned during their regular tour of duty to perform the work and that Rule 36 did not contemplate that employes who had begun a job and were thoroughly familiar with the work should be removed from the job at the close of their tour of duty and employes not familiar with the work assigned. Apparently the organization considered management's position was correct since Foreman Donnelly's decision was never appealed.

On August 20, 1953, Electrician W. Tomlinson, Miami, filed a claim in his own behalf in which he alleged that the company violated Rule 36 of the agreement on August 18, 1953, in that an electrician who stood below him on the overtime board was worked overtime. In his letter of decision dated September 4, 1953, Foreman W. T. Meeks called attention to the fact that the electricians who had performed the work had begun the job during their regular tour of duty and that Rule 36 did not contemplate that overtime would be equalized on a strict day to day basis or that employes familiar with the job would be removed therefrom and employes not conversant with the work assigned. Foreman Meek also stated that while the employes who performed the overtime (Dumas and Freeman) would obtain overtime on this particular job, other electricians would soon accrue as much overtime on other assignments. Foreman Meeks' decision was never appealed. Neither was a similar decision on a claim, filed by Electrician F. Kumalae, Miami, August 20, 1953, in his own behalf appealed. (The above-described cases are available for inspection upon request.)

The company submits that the organization's interpretation of Rule 36 is improper and would render the language of the rule providing that overtime shall be distributed "as equally as possible" inoperative and without meaning.

Finally, even if the work properly should not have been performed by Electricians Settle and Hayes, the company does not agree with the organization's contention that it is required to pay Electricians Holladay and Irwin at the rate of time and one-half. Numerous awards of the Second Division, National Railroad Adjustment Board, hold that the proper rate for work not performed is at the straight time rate. (See Awards 1269, 1530, 1601, 1622, 1625 and 1705.)

CONCLUSION

In this ex parte submission the company has shown that the organization improperly has interpreted the provisions of **Rule 36. Distribution of Overtime.** Also, the company has shown that the rule does not contemplate that employes who have begun a job and are familiar with the work involved shall be removed before the work is completed and that employes not familiar with the work shall be assigned.

The claim in behalf of Electricians Holladay and Irwin is without merit and should be denied.

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.

“Rule 36. Distribution of Overtime. All time worked outside of bulletined hours shall be distributed as equally as possible between the employes involved. Record of overtime shall be kept and shall be subject to review by the local committee.”

Rule 36 does NOT provide that overtime must be assigned on a day to day or rotary basis, but does provide that overtime shall be distributed as **equally as possible**.

The rule, in further providing that a record of overtime shall be kept and subject to review by the local committee, contemplates that equitable adjustments shall be made in order to make distribution as equal as possible.

While the usual procedure may be to operate a rotary overtime board, nothing in Rule 36 precludes the carrier from varying from such procedure as long as the intent of Rule 36 is not violated.

It has not been shown that the claimants in the instant case have been damaged by the actions of the carrier. The rule in question, by its very wording, allows considerable latitude in assigning overtime as long as the carrier distributes the overtime as equally as possible.

It is our understanding, from the reading of the rule, that the intention of the rule was to see to it that employes should be given an equitable distribution in overtime earnings. If a rotary board should be used exclusively such would probably result in inequitable variances over a period of time. The rule, in providing for a review of the overtime record by the committee, gives the organization a means of determining if the overtime is being as equally distributed as possible.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.