

Award No. 2573

Docket No. 2244

2-WAB-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13 RAILWAY EMPLOYES'
DEPARTMENT AFL (Carmen)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman Frank Cotton was improperly compensated for eight and one-half (8½) hours on April 3, 1955 when the carrier refused to compensate at his regular assigned hourly rate when he was called to work on his rest day.

2. That accordingly the carrier be ordered to compensate the aforementioned carman for the difference in his assigned hourly rate and the freight carman hourly rate.

EMPLOYES' STATEMENT OF FACTS: Carman Frank Cotton, hereinafter referred to as the claimant, is assigned to a position at Decatur Car shops to repair and claim triple valves and operate triple valve test rack, and perform other carman's work, Monday through Friday, 7:00 A.M. to 3:30 P.M., with an accompanying hourly rate of \$2.033. The freight carmen's hourly rate is \$1.989.

On April 3, 1955, which was the claimant's rest day, Inspector Foreman J. H. Alderson, called the claimant and requested him to work on the train yard repair track to make necessary repairs and test air on several cars bad ordered by the federal inspector for defective air.

The claim has been handled with the carrier officials, all of whom have declined to adjust the dispute. The agreement effective June 1, 1939, as subsequently amended is controlling.

POSITION OF THE EMPLOYES: It is submitted that under the unambiguous terms of Rule 12 of the current agreement which reads:

"When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if

work. This not to say that there have not been isolated instances when a claim for the higher rate made on a service time card was not caught and was paid in error. There have been many instances where carmen, whose regular assignments carried a differential rate, were called outside their assigned tour of duty, in accordance with their standing on the overtime board, to perform minimum rated carmen's work, and either they did not claim the differential rate, or if they did, their claims were declined, and they were paid the minimum carmen's rate. The following shows just a few of those many instances at Decatur Car Department:

Name	Occupation	Date Overtime Was Worked	Rate of Assigned Position	Rate Paid
J. R. Davern	Coach Carpt.	Aug. 1, 1953	\$2.003 Hr.	\$1.959 Hr.
D. W. Lafferty	" "	Aug. 1, 1953	2.003 "	1.959 "
Ike Weakley	Tr.Val.T.R. Mech.	Aug. 1, 1953	2.003 "	1.959 "
W. L. Gillespie	Frt. Car Welder	Aug. 1, 1953	2.019 "	1.959 "
A. Miller	" " "	Mar. 15, 1954	2.049 "	1.989 "
R. Hagen	" " "	Apr. 3, 1954	2.049 "	1.989 "
G. L. Pickett	Tr.Val.T.R. Mech.	Apr. 25, 1954	2.033 "	1.989 "
A. J. Hutton	" " " "	May 8, 1954	2.033 "	1.989 "
L. I. Reed	Coach Carpt.	June 28, 1954	2.033 "	1.989 "
A. Miller	Frt. Car Welder	Feb. 27, 1955	2.049 "	1.989 "
A. J. Hutton	Tr.Val.T.R. Mech.	Apr. 11, 1955	2.033 "	1.989 "
W. L. Gillespie	Frt. Car Welder	June 4, 1955	2.049 "	1.989 "
A. J. Hutton	Tr.Val.T.R. Mech.	June 21, 1955	2.033 "	1.989 "
A. J. Hutton	" " " "	Sep. 11, 1955	2.033 "	1.989 "
G. L. Pickett	Mill Hand	Oct. 13, 1955	2.033 "	1.989 "

Regardless of any other factor, there is a plain and unambiguous rule provision in the controlling agreement that prescribes the proper payment due Frank Cotton for the work which he performed on April 3, 1955. There is only one rule provision in the agreement that is applicable to the situation here present, and that is Rule 114, paragraph (b), which specifies that "Carmen doing all other work * * * enumerated in Rule 112, will be paid the minimum carmen's rate", and that is exactly the manner in which Cotton was compensated for the work he did on April 3, 1955.

There is no foundation for the employees' claim that Carman Frank Cotton was improperly compensated for eight and one-half (8½) hours on April 3, 1955. The contentions of the committee should be dismissed and the claim 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.

Claimant was called from the overtime board on his rest day to augment the force making repairs to air brakes on freight cars. That work is rated at \$1.989. The claimant regularly held a position rated at \$2.033 and claims such higher rate for that work. The claim is based upon Rule 12 which is captioned "Filling Vacancies" and reads as follows:

"When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed."

It appears that in 1946 some similar claims were disposed of on the property and the Carrier's notation thereon is as follows:

"Cases of overtime involved by using first man out on the overtime board and having a differential rate were to be paid as claimed. It was also understood that the Committee will discontinue the practice of furnishing premium-rated men to fill temporary vacancies."

That settlement acknowledges that the remedy of the carrier is not to refuse to pay the differential when a premium-rated man is used, but to decline to use such men on overtime to fill temporary vacancies, until a different agreement is negotiated with the committee.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July, 1957.