

Award No. 674
Docket No. 660
2-D&RGW-CM-'41

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO 10, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYES: That at Bond, Colorado, the carrier is working Carmen Nick Espinosa, James Gray and Jack Varderman two twelve hour shifts in violation of Rule 2, paragraph (c) of the agreement, effective September 1, 1940.

EMPLOYES' STATEMENT OF FACTS: Bond, Colorado, is a freight train terminal point 129 miles west of Denver, and at which point the carrier maintains the following force at the hours and rates of pay or salaries indicated opposite the respective classifications:

1 Enginehouse Foreman	\$274.00 per month	6 AM to 6 PM
1 Assistant Enginehouse Foreman	250.00 per month	6 PM to 6 AM
1 Machinist	.86 per hour	11 AM to 8 PM
1 Car Foreman (working)	240.00 per month	7 AM to 7 PM
1 Carman	187.36 per month	7 AM to 7 PM
2 Carmen	187.36 per month	7 PM to 7 AM
1 Coal Chute Operator-Pumper	134.21 per month	6 AM to 4 PM
1 Coal Chute Operator-Pumper	134.21 per month	8 PM to 6 AM
1 Enginehouse Laborer	.43 per hour	8 AM to 4 PM
1 Enginehouse Laborer	.43 per hour	4 PM to 12 midnight
1 Enginehouse Laborer	.43 per hour	12 midnight to 8 AM

Prior to September 1, 1940, the carmen employed at Bond, Colorado, worked the same twelve hour shifts as mentioned above and were paid the minimum of \$177.17 per month, plus a minimum of one hour at pro rata rate of pay for each call, and actual time on a minute basis for services performed in excess of one hour, outside of their regular shift hours.

Effective September 15, 1940, the minimum rate of pay of carmen was increased from 73 to 77 cents per hour, which thereby established a monthly rate of \$187.36 for these carmen at Bond, Colorado.

Since September 15, 1940, the carrier has refused to pay these carmen overtime for work performed in excess of 8 hours on the ground that Rule 12 applies.

instant claim for the reason we do not have three shifts of carmen employed at Bond. With respect to the starting time rules, both shifts at Bond are being started strictly in accordance with the provisions of paragraph (b) of Rule 2 which reads:

"Where two shifts are employed, the starting time of the first shift will be governed by the provisions of paragraph (a) of this rule, and the second shift will start not later than 8:00 PM, unless otherwise agreed to by the Master Mechanic and Local Committee according to service requirements."

The carrier holds that the work required of the carmen at Bond is intermittent and very irregular as is evidenced by the number of trains passing through that point in a twenty-four hour period. The carrier further holds in view of the small number of trains passing through Bond, together with the fact all passenger trains and nearly all freight trains are run through Bond and the short time they are at the station, that the carmen employed there do not work in excess of eight hours during their twelve hour assignment.

There is no prohibition in Rule 12 against placing employees assigned to a local point on a monthly basis on a definite twelve hours assignment as was agreed to February 24, 1939. As a matter of fact placing these employees on a definite assignment was a favor to them.

There has been no material change in the working conditions at Bond since it was opened as a terminal. The only change has been the running of cabooses through that point, thereby reducing the delays and at the same time shortening the time in which the carmen would have to perform their work consisting principally of inspecting and repairing trains passing through the terminal.

The carrier asserts that

(a) The organization, from the time carmen were first employed at Bond in 1934 until the date of the instant request, February 27, 1941, was constantly aware of and recognized that the carmen at Bond were monthly rated carmen—assigned to local point and came within the provisions of Rule 13 (present Rule 12) of the effective agreements. Submitted herewith is copy of letter from General Chairman Hull under date of May 26, 1936 to Mr. W. J. O'Neill, general mechanical superintendent, Denver & Rio Grande Western Railroad, confirming this assertion. Settlement of the claims presented in this letter of May 26, 1936 were effected with the organization in line with the provisions of Rule 13 (present Rule 12) of the agreement.

(b) The organization further confirmed the recognition of these carmen at Bond as monthly rated employees coming within the provisions of Rule 13 (present Rule 12) in the letter agreement of February 24, 1939.

(c) A consideration of the evidence including the physical facts, the previous conduct of the parties as to the intent and meaning of the applicable rule of the agreement, as well as the practical and economic considerations, fully justifies carrier in respectfully asking that the request of the organization be denied.

For the information of the Board the monthly rate of pay of these monthly rated employees is \$187.36 with overtime as provided in the letter agreement of February 24, 1939. The carrier understands there is no monetary consideration involved in the instant request.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The evidence of record discloses that the situation as to shifts at Bond, Colorado, is expressly governed by the letter agreement of February 24, 1939, and that the arrangements therein specified were not superseded by any provision in the agreement effective September 1, 1940.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of December, 1941.