

Award No. 719

Docket No. 680

2-SP&S-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

SPOKANE, PORTLAND AND SEATTLE RAILWAY CO.

DISPUTE: CLAIM OF EMPLOYES: That Car Repairer M. W. Pewitt be compensated at the rate of time and one-half for the services which he performed between 12:30 P. M. and 2:30 P. M., Saturday, November 2, 1940, under Rule 4 (b) of the current agreement.

JOINT STATEMENT OF FACTS: Under bulletin posted October 5, 1940, the regular working hours in effect at Portland repair tracks on November 2, 1940, were forty-four (44) hours per week. Mr. Pewitt was employed at Portland repair tracks from 8:00 A. M. to 12:00 Noon—12:30 P. M. to 4:30 P. M., Monday through Friday, and 8:00 A. M. to 12:00 Noon, Saturday. Saturday morning, November 2, 1940, the foreman instructed Car Repairer Pewitt to work that afternoon, and he worked from 12:30 to 2:30 P. M., for which he was compensated only at his straight time rate of pay.

POSITION OF EMPLOYES: In support of our claim in this case, your attention is called to Rule 4 (b), which in part reads:

"For continuous service after regular working hours employees will be paid time and one-half on the actual minute basis with a minimum of one hour for any such service performed." (Underscoring is ours.)

It is significant here to state that the bulletined hours referred to in the statement of facts were the **regular working hours** on the Portland repair tracks in fact and within the meaning of Rule 4 (b) above quoted, which is substantiated by Exhibit A herewith submitted, that the regular hours of these repair track forces were forty-four (44) hours per week and no more.

It is our further contention that the claimant did work in excess of his established and recognized regular hours of work on November 2, 1940, within the meaning of Rule 4 (b) and therefore he is entitled to one hour additional compensation for his said services.

Mr. LaBertew in his letter of December 31, 1940, (Exhibit G) states that it has always been the practice on the Spokane, Portland and Seattle Railway to work carmen on Saturday afternoons within their assigned hours and pay them the pro rata rate for that day, and this has been the "recognized and accepted practice and interpretation of the rule." In connection

There are no conditions stated in Rule 4 (b) which would now warrant a different interpretation by the employes, whereby time and one-half should be paid instead of pro rata, after completing the four-hour assignment on Saturdays, thereby changing a rule under which pro rata rates have been claimed and allowed over a period of nineteen years.

Exhibits A to H, inclusive, are copies of correspondence progressing the claim.

Carrier respectfully requests your Honorable Board to deny this claim, there being no violation of Rule 4 (b).

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.

There is no dispute in this record, the joint statement of facts having been agreed to.

The regular working hours in effect at Portland repair tracks on November 2, 1940 were 44 hours per week. Mr. Pewitt, the employe, was regularly assigned from 8:00 A. M. to 12:00 Noon and from 12:30 P. M. to 4:30 P. M., Monday through Friday, and 8:00 A. M. to 12:00 Noon Saturday. Saturday morning November 2, 1940, the foreman instructed car repairer Pewitt to work that afternoon and it is for the work performed in the afternoon that he seeks compensation. Rule 4 (b) provides "for continuous service after regular working hours employes will be paid time and one-half on the actual minute basis with a minimum of one hour for any such service performed."

The bulletined hours for the gang in which claimant was working on the repair track were 44 hours per week and no more. These were the regular working hours. It provided the regular working hours on Saturday from 8:00 A. M. to 12:00 Noon. Pewitt was required to work from 12:30 P. M. to 2:30 P. M. on Saturday afternoon, and clearly under rule 4 (b) the time worked on Saturday afternoon was continuous service after regular working hours and under the current agreement he was entitled to be paid time and one-half.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.