

Award No. 811
Docket No. 760
2-IGN(SAU&G)-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)**

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

**SAN ANTONIO, UVALDE AND GULF RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That under controlling Federal regulations and agreement, Coach Cleaner Maximo Castillo is entitled to 54 cents per hour in lieu of 36, for the 24 hours overtime which he worked during the period March 16 to 31, 1941.

EMPLOYEES' STATEMENT OF FACTS: Maximo Castillo is regularly assigned as coach cleaner at Laredo, Texas, working eight hours per day, seven days per week. He worked eight hours per day from March 16 to 31, 1941, inclusive, and in addition worked 24 actual hours overtime. He claimed time and one-half for the overtime hours, but was allowed only straight time rate for all overtime worked.

POSITION OF EMPLOYEES: Prior to March 1, 1941, hourly rate of coach cleaners at Laredo was .32 per hour. Effective with 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 to be paid on Class "A" railroads became \$.36 per hour. Castillo worked 128 hours straight time and 24 actual hours overtime, for which he was entitled to \$59.04, less the 3% Retirement Tax of \$1.77. He received a check for \$53.08, which made a shortage amounting to \$4.19. On April 14, 1941, he wrote the following letter to his foreman:

Mr. Marquette:

Dear Sir:

I wish to know why I was 12 hours short on my check. I worked 16 days and 36 hours extra which makes a total of 164 hours at \$.36 per hour, makes a total of \$59.04, less 3% or \$1.77, amounting to \$57.27. I received a check for \$53.08. \$4.19 is the amount that I failed to receive.

Yours sincerely,

Maximo Castillo.

ployes covered by the Act to 36¢ per hour in case the rate being paid the employes at the time the Act became effective was less than the minimum rate established by the Act.

It is evident that the organization, in proposing a change in their present rule or the establishment of a rule as contained in their letter to the general manager dated April 10, 1941, quoted in the carrier's statement of facts, considered that the Fair Labor Standards Act would not apply with respect to the payment of overtime to employes whose hourly overtime rates would equal or exceed the minimum rate established by the Act; otherwise, the carrier would not have been requested to state its position with respect to the payment of overtime to employes covered by the Fair Labor Standards Act of 1938 during the conference held on May 8, 1941.

Railroads are not subject to the hour provisions of the Fair Labor Standards Act, and, therefore, the overtime regulations which have been established by the Administrator of the Fair Labor Standards Act do not apply to railroad employes who come under the Wage-Hour Order, and, for that reason, the Fair Labor Standards Act is not applicable with respect to the payment of employes in railroad service who are paid an hourly rate of 36¢ or in excess thereof, and, therefore, should not be considered as having any application with respect to the employe covered by the instant case inasmuch as he has been paid in excess of the minimum hourly rate established under the Fair Labor Standards Act for each of the 24 hours of service which the employes claim he has been underpaid.

It is the contention of the carrier that M. Castillo has been fully compensated for the services performed in accordance with the agreement with the organization, and your Honorable Board is respectfully petitioned, upon the evidence submitted, to render 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.

The order of the Administrator of the Wages and Hours Division fixing a minimum rate of 36 cents per hour raised the basic rate of pay, under the controlling agreement, to that amount as effectively as if the parties had agreed upon it through negotiation. Claimant is entitled to be paid for overtime at 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.