

Award No. 840
Docket No. 774
2-D&RGW-CM-'42

**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 EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DENVER & RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling law and agreement:

- (a) Three eight-hour shifts be established for carmen at Thistle, Utah.
- (b) Carmen Gren, C. L. and W. K. Johnson be paid rate and one-half for ninth and tenth hours of assigned duty retroactive to December 6, 1941.
- (c) Carman Archie Beck be paid rate and one-half for all service performed in excess of eight (8) hours a day retroactive to December 6, 1941.

EMPLOYEES' STATEMENT OF FACTS: Effective December 6, 1941, the below named carmen employed at Thistle, Utah, were assigned on a ten-hour tour of duty basis as follows:

Ralph Gren	8:00 A. M. to 6:00 P. M.....	10 hour spread
C. L. Johnson.....	6:00 P. M. to 4:00 A. M.....	10 hour spread
W. K. Johnson.....	4:00 A. M. to 2:00 P. M.....	10 hour spread
Archie Beck	10:00 P. M. to 8:00 A. M.....	10 hour spread

Carmen Ralph Gren, C. L. Johnson and W. K. Johnson are paid on a monthly rate of \$211.70 per month, which is just what can be earned eight-hours per day figured on the basic rate of pay. Orders have been issued to these men to show eight-hours on their time cards and no compensation is allowed for time worked in excess of eight hours within the assigned ten-hour tour of duty. Calls for service outside of the assigned ten-hour tour of duty is paid for at the overtime rate on the minute basis.

Carman Archie Beck is classed as a working foreman and paid the rate of \$260.40 per month with no overtime allowed for work performed within or without his assigned ten-hour tour of duty.

The carrier has declined the claim of the employees.

POSITION OF EMPLOYEES: The Employees wish to point out, for the information of the Honorable Board, that this instant claim is parallel to and in substance a continuation of the dispute heard in Docket No. 698, December 12, 1941.

Note carefully the provisions of this rule. Paragraph (a) provides that mechanics in service will be considered for promotion to positions of foremen. If foremen are within the scope of the agreement, then employees would be advanced under the provisions of various seniority rules. Paragraph (b) makes a **declaration of policy by the company** and the company states that it is the company policy to promote its own employees, but when competent employees cannot be found in the ranks or will not accept promotion, the company reserves the right to vary from the policy by appointing from other sources men to the positions of foremen.

Note again carefully paragraph (c) "Employees promoted to supervisory positions and/or other special service of the Company, will retain seniority at last point employed as mechanics so long as service is continuous." Surely such a provision would not be necessary if foremen came within the scope of the agreement, as employees promoted from ranks of mechanics to positions of foremen, would automatically retain their seniority.

Paragraph (d) provides that mechanics in service will be given preference for promotion to position of working foremen. It is the carrier's contention that in establishing positions of working foremen, it will give preference to the promotion of its own employees from the ranks of mechanics and is privileged to select an employee who in the carrier's judgment is best fitted for such position of working foreman.

Rule 28 (e) reads:

"A foreman may perform mechanics' work at points where mechanics are not employed, or where there is not a sufficient number of mechanics employed that he is assigned to supervise to justify confining his duties strictly to supervision, or when mechanics are not immediately available, and in all cases where the requirements of the service demand. This rule shall not be construed to prevent the operator of a steam shovel, ditcher, clamshell, wrecking outfit, pile driver, motor car and other similar equipment from making minor repairs to such equipment as they are qualified to perform while on the line of road. Not more than one operator will be employed at shops where mechanics are undergoing repairs and his duties shall consist of testing, inspecting and adjusting machines and applying cables."

Under the provisions of this rule a foreman is not prohibited from doing mechanic's work at points where mechanics are not employed or where there is not sufficient number of mechanics employed that he is assigned to supervise to justify devoting his entire time to strictly supervision, or where mechanics are not immediately available, and in all cases where requirements of the service demand.

The carrier holds and contends that it has violated no rules in this case, and submits that in view of the facts in this case, the claim 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.

In Award No. 753, involving the same parties and in essence the same issues as are here in dispute under paragraphs (a) and (b) of the claim, this Division, as recently as April 20, 1942, made the following findings:

"At Thistle, Utah, the positions now held by the claimants have been on a monthly basis for better than ten years. That under Rule

12 of the current agreement it specifically provides that no overtime will be allowed for time worked in excess of eight hours per day and it also provides that no time is to be deducted unless the employees lay off on their own accord. It is further provided in the agreement that if the rule does not produce adequate compensation for certain of these positions by reason of the occupants being required to work excessive hours, the salary for these positions may be taken up for adjustment and under this rule, claimants in this case, if they are working excessive hours, have a right to take up for adjustment the question of the compensation they have been receiving. This is the procedure they should have followed instead of filing claim now before this Board."

No adequate grounds have been adduced for disturbing these findings.

It is further found, in connection with paragraph (c) of the claim, that Carman Archie Beck is a working foreman, and that there is no rule in the agreement which governs the compensation of foremen.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.