

Award No. 841
Docket No. 782
2-CRI&P-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. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE CHICAGO ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

(Frank O. Lowden and Joseph B. Fleming, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement and Rules 5, 7 and 29 thereof, Carman E. Cunningham, for working in the place of Foreman C. Horton on October 18 and 19, 1941, and changing shifts in connection therewith, is entitled to fifteen (15) additional hours pay at eighty-seven (87¢) cents per hour.

EMPLOYEES' STATEMENT OF FACTS: Car Foreman C. Horton is employed by the carrier at Silvis, Illinois. His assigned hours of duty were from 7:00 P. M. to 7:00 A. M. He laid off on October 18 and 19, 1941.

Carman E. Cunningham—whose regular assigned hours of duty on the day shift were from 7:15 A. M. to 4:00 P. M.—was assigned in the place of Foreman Horton, working his (Horton's) regularly assigned hours from 7:00 P. M. to 7:00 A. M. on the nights of the 18th and 19th of October, 1941.

For this assignment on the night of the 18th in the place of Foreman Horton, Carman Cunningham was compensated by this carrier for twelve and one-half (12½) hours.

For this assignment on the night of October 19th, in the place of Foreman Horton, Carman Cunningham was compensated by this carrier for twelve and one-half (12½) hours.

For doubling back on his (Cunningham's) regular day shift assignment on October 20—starting at 7:15 A. M. and ending at 4:00 P. M.—Carman Cunningham was compensated by this carrier for eight (8) hours.

POSITION OF EMPLOYEES: Rule 7 reads in part as follows:

"Employees changed from one shift to another will be paid overtime rate for the first shift of each change. Employees working two shifts or more on a new shift (assignment) shall be considered transferred."

That Carman Cunningham, having worked his own regular assigned hours from 7:15 A. M. to 4:00 P. M. on October 18, 1941, on the day shift, was most certainly changed to the night shift when assigned to fill Foreman

and that means the work specified in the various classification of work rules of the various shopcrafts in the agreement of September 15, 1941. The last paragraph of Rule 5 states:

"Except as otherwise provided for in these rules."

In Rule 29 a specific basis of pay is provided for, hence Rule 5 has no connection with Rule 29 as to method of payment. Neither Rules 5 nor 7 therefore, apply to performance of foreman's duties.

Rule 29 is a special rule covering a specific method of payment to a mechanic filling a foreman's position. No other basis of pay was agreed upon.

In this case Carman Cunningham voluntarily accepted a temporary position not under the shopmen's agreement. He voluntarily accepted the foreman duties and thereby accepted the pay feature of Rule 29.

There is no obligation on the part of the carrier under the agreement that mechanics must be used on such foreman vacancies. When Mr. Cunningham filled the foreman position he left the jurisdiction of his own agreement. By accepting the foreman's vacancy he secured an additional day's work for which he received eight hours' pay at straight time rate and three hours at time and one-half on October 18, and an additional three hours pay at time and one-half on October 19.

In conclusion, it is our position that Rule 29 of the agreement of September 15, 1941, is the only rule governing this case and that the claimant was properly paid under that rule. The claim has no merit and should be declined.

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 evidence of record, as modified at the hearing before the Referee, discloses that Carman Cunningham worked 19 hours in each of two 24-hour periods on October 18-19, 1941, and October 19-20, 1941.

In these circumstances he is entitled in each case, under the rules of the agreement, to straight time for the first eight hours, to time and one-half for the second eight hours, and to double time for the remaining three hours.

He should be paid in connection with this service, therefore, at 87¢ per hour, the difference between the amount he actually received and the amount he should have received under the above requirements.

AWARD

Claim sustained to extent and on basis indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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