

Award No. 949

Docket No. 823

2-SP(PL)-FO-'43

**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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES:

1 That on and since July 8, 1941, the carrier did and persists in violating the controlling agreement and Rule 16 thereof by not allowing Stationary Fireman W. J. Esser—

- (a) To work the remainder of his assigned hours from 2:30 to 5:00 P. M. July 8, 1941, and
- (b) Time and one-half for the last three hours worked on July 31, 1941.

2 That in consideration of the aforesaid violations, Stationary Fireman W. J. Esser be compensated for—

- (a) Two hours and thirty minutes' time lost on July 8, 1941, at the pro rata rate, and
- (b) The last three hours worked on July 31, 1941, at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. J. Esser is an employe of the carrier and holds a regular assigned position as stationary fireman in the general office building at San Francisco; his regular bulletined hours are as follows:

Sunday	5:00 A. M. to 2:30 P. M.
Monday	8:00 A. M. to 5:00 P. M.
Tuesday	8:00 A. M. to 5:00 P. M.
Wednesday	8:00 A. M. to 5:00 P. M.
Thursday	8:00 A. M. to 5:00 P. M.
Friday	2:30 P. M. to 12 Mid.
Saturday	Rest Day

less one (1) hour each day for lunch period.

On July 8, 1941, which was Tuesday, Mr. Esser was requested to be at work at 5:00 A. M., to work another employe's shift account being off sick, this being three hours in advance of Mr. Esser's regular assignment for this day. Mr. Esser was released from duty at 2:30 P. M.; two hours thirty minutes ahead of his regular bulletined assignment time, which was 5:00 P. M.

POSITION OF CARRIER: The statement of claim alleges:

"1. That on and since July 8, 1941, the carrier did and persists in violating the controlling agreement and Rule 16 thereof by not allowing stationary fireman W. J. Esser—

(a) to work the remainder of his assigned hours from 2:30 to 5:00 PM, July 8, 1941 and

(b) time and one-half for the last three hours worked on July 31, 1941.

2. That in consideration of the aforesaid violations, stationary fireman W. J. Esser be compensated for

(a) two hours and thirty minutes' time lost on July 8, 1941, at the pro rata rate, and

(b) the last three hours worked on July 31, 1941, at time and one-half rate."

The carrier submits that the above-quoted claim is so ambiguous that the carrier is unable to comprehend as to what the petitioner is claiming in the instant case. Furthermore, examination of Exhibits A, B, D and F will disclose the confused, ambiguous and illogical position of the petitioner relative to the dispute arising from the claimant working Jerro's assignment on July 8, 1941.

The carrier submits that its action in using the claimant to fill Jerro's assignment on July 8, 1941 was necessary and proper for the reason that an emergency existed and the carrier had no alternative but to so use the claimant and its said action in no way violated any provision of the current agreement. Furthermore, at no time has the petitioner contended that the carrier's action in using the claimant to fill Jerro's assignment on July 8 was improper or that it violated any provision of the current agreement. Such being the case, the only question or issue involved in the instant case is whether the claimant was properly compensated for services performed on July 8, 1941.

During July, 1941 the claimant worked thirty minutes in excess of his established monthly assignment (212 hours 20 minutes). The said overtime was performed on July 8, when the claimant worked eight hours thirty minutes instead of his normal assignment of eight hours (see paragraph 2, carrier's statement of facts). The claimant was entitled to and was paid thirty minutes at the overtime rate in accordance with the applicable portion of Rule 16 (see paragraphs 2 and 4, carrier's statement of facts). The carrier, in so compensating the claimant, strictly complied with all applicable rules and provisions of the current agreement and any claim presented by the petitioner for additional compensation on behalf of the claimant for services performed on July 8, 1941, or the month of July, 1941, can not be supported by any agreement rule or provision.

CONCLUSION: The carrier asserts that, having conclusively established that the alleged claim in the instant case is entirely without merit, it is incumbent upon the Board to deny it.

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 waived right of appearance at hearing thereon.

The evidence of record supports the conclusion that stationary fireman W. J. Esser was paid for his services on July 8, 1941, and also for the last three hours worked by him on July 31, 1941, in conformity with the provisions of Rule 16 of the prevailing agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of October, 1943.