

Award No. 951

Docket No. 863

2-ACL-CM-'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. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Painters Allen F. Harris, B. F. Anderson, and E. W. Revels, Jacksonville, Florida, be compensated for twenty-one (21) hours at time and one-half, totaling Thirty and 54/100 Dollars (\$30.54), or Ten and 18/100 Dollars (\$10.18) each, for work performed at Jacksonville, Florida, by Painter Ira Moore, Jr., Waycross, Georgia, May 18 and 19, 1942.

EMPLOYES' STATEMENT OF FACTS: Diesel switch unit 601, at the time this dispute originated, was regularly operating in switching service at Jacksonville, Florida.

On May 18 and 19, 1942, Diesel unit 601 was temporarily removed from service and taken to the shops for complete overall paint job.

We have at Jacksonville, Florida, three (3) regularly assigned employes in the painters' roster-division of the carmen's craft, as follows:

Name:	Seniority Date:
Allen F. Harris	3- 8-24
B. F. Anderson	6-29-26
E. W. Revels	2-19-36

These employes are all assigned to the first shift—7:30 A. M. to 4:00 P. M., six days per week.

Paint Foreman F. B. Roberson accompanied by Painter Ira Moore, Jr., both of Waycross, Georgia, reported to the Jacksonville, Florida shops on the dates mentioned above and assisted in painting Diesel unit 601.

Painter Ira Moore, Jr., actually worked in excess of twenty-one hours, assisting in the painting of this Diesel unit.

While at Jacksonville and away from seniority home point, Waycross, Georgia, Painter Moore was paid straight time and overtime rates in accordance with the assigned hours at Jacksonville. He was actually paid sixteen (16) hours straight time, and five and one-half (5½) hours at time and one-half. And in addition to the twenty-one and one-half (21½) hours actually made in Jacksonville, he was paid six (6) hours straight time for traveling to and from Jacksonville, Florida. All time made was at the rate of 97¢ per hour.

tion, suffered any monetary loss, neither were any of these three men in any way displaced from their jobs, the carrier cannot see any grounds for a claim by sending Painter Ira Moore, Jr. to Jacksonville to help out on needed work at that point.

There is no merit in this claim and the carrier respectfully requests the National Railroad Adjustment Board to deny this claim.

Carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer.

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.

Under Rule 12 (a) of the agreement Painters Harris, Anderson, and Revels, with seniority at Jacksonville, were entitled to the work performed at that point on May 18 and 19, 1942, in preference to Painter Ira Moore, Jr., with seniority at Waycross. This right embraced both work required during regularly assigned hours and overtime work.

Since, however, the claimants worked their regular assignments on the days involved, — two of them, indeed, participated in the very job at issue, — they suffered no injury, to the extent of eight hours each of these two days, by the augmentation of the force at Jacksonville through the use of the Waycross painter. To insist, in the special circumstances of this proceeding, that all of the service rendered by Painter Moore should have been performed on an overtime basis, after the claimants' regular assignments had been completed, is to infringe improperly upon the right of the carrier to determine the needs of the service and the plan of work calculated to meet these needs promptly and effectively.

It was agreed by the parties, on the other hand, that Painter Moore actually performed five and one-half hours of overtime work at Jacksonville. Painters Harris, Anderson, and Revels were entitled to this work, and they should be compensated accordingly at overtime rates, with the aggregate amount divided equally between the three claimants.

AWARD

Claim sustained to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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