

Award No. 952

Docket No. 864

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

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Allen F. Harris, B. F. Anderson and E. W. Revels, regularly employed painters at Jacksonville, Florida, be compensated at overtime rates for all time actually worked by Foreman F. B. Roberson in painting Diesel Unit No. 601, May 18th and 19th, 1942, totaling eighteen (18) hours and amounting to \$25.19, or \$8.73 each.

EMPLOYEES' STATEMENT OF FACTS: At Jacksonville, Florida, carrier maintains roundhouse, freight car repair, passenger car repair (limited), inspection and switching yard facilities.

There are employed at Jacksonville three (3) painters, all regularly assigned to the first shift, six days per week, from 7:30 A. M. to 4:00 P. M., as follows:

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

On May 18 and 19, 1942, Diesel switch unit 601 was taken into the shops at Jacksonville, Florida, for complete overall paint job.

Paint Foreman F. B. Roberson of Waycross, Georgia, was sent to Jacksonville to supervise and assist in the work of painting this Diesel switch engine.

On May 18 the work commenced at 7:30 A. M. and continued through until 6:00 P. M. On the 19th work was started at 7:30 A. M. and engine was completed at 7:00 P. M. A total of twenty-one hours was spent in painting engine—ten hours on May 18, and eleven hours on May 19.

In addition to his duties as supervisor, Foreman Roberson actually performed work of a painter. (See Exhibit F.)

POSITION OF EMPLOYEES: The controlling agreement, between System Federation No. 42, Railway Employees' Department, American Federation of Labor, and the Atlantic Coast Line Railroad, is dated November 11, 1940. Rule 402 of the agreement reads in part as follows:

Affidavit from Mr. F. B. Roberson, foreman painter, Waycross, Georgia, is submitted as carrier's Exhibit B. Mr. Roberson is an experienced foreman of painters, supervises the painting of all kinds of railroad equipment—passenger, freight and locomotive. Mr. Roberson in his affidavit states that the two painters at Jacksonville were not familiar with the color scheming, neither had they ever done this kind of work before. He also states that not only was it necessary to supervise every move of these men, but it was necessary for him to do certain parts of the work, so he could show them how it should be done. He also states that at no time was he doing journeyman's work to take work away from the painters, but anything he did was in a supervisory capacity.

Rule 27, paragraph C of the agreement with the employes of the mechanical department, reads as follows:

Foremen are not prohibited in the exercise of their duties from performing mechanics' work.

The carrier contends that Foreman Roberson did not violate above quoted rule. Any little work that he did was to show men who did not know their job, and was in performance of his duty. Foreman Roberson supervises approximately sixty men in the Waycross shops, and we have never had any complaint from any of them that he did other than supervisor's work. It seems peculiar, therefore, that when he went to Jacksonville for a two-day job, the three painters at that point would complain that he was doing their work.

It ill behooves mechanics to make a complaint of this kind. The carrier went to the expense of sending a foreman to Jacksonville to supervise and teach them how to do a particular job about which they had no knowledge, and wanted these men to get the benefit of the foreman's knowledge and experience, so they could become better mechanics.

The carrier claims there is no merit whatsoever to the claim, and, 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 27 (c) of the agreement Foreman Roberson was not prohibited from performing mechanics' work at Jacksonville on May 18 and 19, 1942, in the exercise of his supervisory duties; but to the extent that he may have performed mechanics' work beyond that incidental to the exercise of his supervisory duties, there would be a violation of Rule 27 (a) of the agreement, and Painters Harris, Anderson and Revels would be entitled to compensation for such work.

Foreman Roberson, like Painter Moore whom he brought with him from Waycross, worked a total of twenty-one hours on these two days. The evidence of record supports the conclusion that a substantial part of this work was mechanics' work performed independently of the exercise of his duties as foreman, and hence in violation of Rule 27 (a), although it provides no adequate basis for a precise determination of the extent of the violation.

Such a determination, however, is not necessary to an equitable disposition of this dispute. Since 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 resulting from the performance of mechanics' work by the foreman in contravention of the agreement. To insist, in the special circumstances of this proceeding, that all of the mechanics' service rendered by Foreman Roberson 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 is clear, on the other hand, that Foreman Roberson actually worked five overtime hours on these two days; and there can be no question that these five hours constitute the minimum amount of purely mechanics' work performed by him. 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.