

Award No. 988

Docket No. 949

2-Int-CM-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

INTERSTATE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the carrier violated the controlling agreement and Rule 3, thereof, when Carman O. S. Anderson was only paid straight time for having worked 8 hours overtime, from 11 P. M., August 12, to 7 A. M., August 13, 1943.

That the carrier be ordered to pay Carman O. S. Anderson four additional hours at the pro rata rate for the services which he performed beginning at 11 P. M., August 12, 1943.

EMPLOYEES' STATEMENT OF FACTS: On August 12, 1943, O. S. Anderson was called to fill the vacancy of L. S. Leonard who was ill and could not work. O. S. Anderson's regular starting time is 7:30 A. M. and he worked eight hours. He was then called to fill the vacancy of L. S. Leonard from 11 P. M. to 7 A. M., August 12, 1943, completing an eight-hour shift ending at 7 A. M. August 13, 1943.

The controlling agreement is dated effective March 24, 1943.

POSITION OF EMPLOYEES: O. S. Anderson should have been paid time and one-half from 11 P. M., August 12, 1943, to 7 A. M. August 13, 1943.

The current agreement effective March 24, 1943, contains the following rules:

Rule 1. Eight (8) hours work, exclusive of meal period, shall constitute a day for employees whose duties require practically continuous application.

All employees coming under the provisions of this agreement, except as otherwise provided in this schedule of rules, or as may hereafter be established between the Railroad and employees, shall be paid on an hourly basis.

OVERTIME—CONTINUOUS SERVICE

Rule 3. For continuous service, after regular daily working hours employees will be paid time and one-half on the actual minute basis, with a minimum of one hour pay for any such service performed.

POSITION OF CARRIER: Mr. Jewell's complaint is:

"That the carrier violated the controlling agreement and Rule 3 thereof, when Carman O. S. Anderson was only paid straight time for having worked 8 hours overtime from 11:00 P. M. August 12, to 7:00 A. M., August 13, 1943."

That part of Rule 3, which Mr. Jewell no doubt relies on, reads as follows:

"Rule 3. For continuous service, after regular daily working hours employees will be paid time and one-half on the actual minute basis, with a minimum of one hour pay for any such service performed."

"Employees will be allowed time and one-half, on minute basis for services performed continuously in advance of the regular working period."

Mr. Anderson is regularly employed as car repairer at a rate of 86¢ per hour. On August 11, his time slip shows that he protected his own job from 7:30 A. M. until 4:00 P. M., at his regular rate of 86¢ per hour. After he finished his work at 4:00 P. M. on August 11, and before 11:00 P. M., August 11, it was found that an inspector on the third shift, Mr. L. S. Leonard, could not protect his job, and Mr. Anderson was requested to work as inspector, in the place of L. S. Leonard, beginning at 11:00 P. M. on August 11, which he did. He also filled Mr. Leonard's regular job between the hours of 11:00 P. M. and 7:00 A. M., August 12, working as car inspector at a rate of 88¢ per hour. Mr. Anderson did not report for his regular work at 7:30 A. M. on August 12. He came out on the night of August 12, at 11:00 P. M. as relief inspector, at which he worked until 7:00 A. M., August 13. For this work he was paid 88¢ per hour, the inspector's rate. At 7:30 A. M., Mr. Anderson went back on his regular assigned job as car repairer. The alleged claim involves time and one-half pay for the eight hours which he worked as emergency inspector immediately previous to 7:30 A. M., August 13.

It has been the policy of the Interstate Railroad Company to permit its employes to be absent when necessary, whether for sickness, or otherwise, and it has been our contention that when an employe relieves another employe, and thus enables us to readily permit the man to be absent, time and one-half pay is not involved under any rule of our agreement. There has never been any question about paying time and one-half for continuous work performed by any one of our employes when working his own job.

Rule 7 of our agreement, covers temporary absences, and reads as follows:

"Employes sent out to temporarily fill vacancies at an outlying point or shop, will be paid continuous time from time ordered to leave home point to time of reporting at point at which sent, straight time rates to be paid for straight time hours at home station and for all other time, whether waiting or traveling. If, on arrival at the outlying point, there is an opportunity to go to bed for five (5) hours or more before starting work, time will not be allowed for such hours."

We have only one shop, and it is located at Andover, where both Mr. Anderson and Mr. Leonard work. Rule 7, and not Rule 3, applies at Andover shop.

Under the circumstances, I hope that the Board will find in our favor.

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 shows that Carman O. S. Anderson had worked his regular assignment, 7:30 A. M. to 4 P. M., on August 12, 1943, and was called on the same date to fill the regular eight hour assignment of another employe commencing at 11 P. M.

The provisions of Rule 3 contemplate that work performed in such circumstances and in excess of regular assigned hours shall be paid on overtime basis.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of February, 1944.