

Award No. 1736
Docket No. 1627
2-AT&SF-EW-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the carrier improperly compensated Electrician D. C. Boice for work performed on Washington's Birthday, February 22, 1952, during the hours from 8:00 A. M. to 6:15 P. M.

2. That accordingly the carrier be ordered to compensate the aforesaid electrician the difference between what he was paid for February 22, 1952 and what he was entitled to be paid at the applicable overtime rate.

EMPLOYEES' STATEMENT OF FACTS: Car Lighting and Air Conditioning Inspector Boice, hereinafter referred to as the claimant, is a monthly rated employee, regularly employed by the carrier in the mechanical department as a car lighting and air conditioning inspector with headquarters at Oklahoma City, Oklahoma. On February 22, 1952, a legal holiday, the claimant was assigned to protect the service on this holiday in accordance with the manner in which holiday work is handled and on such day performed work and held on duty from 8:00 A. M. to 6:15 P. M. There are two CL&AC inspectors regularly employed at this point and holiday work is protected by the two employees taking turns working on holidays. On the claimant's holidays to work, his starting time is 8:00 A. M. to 4:00 P. M.

The carrier compensated the claimant for the work performed on February 22nd in the amount of four hours' pay at the straight time rate. Compensation for work performed or held on duty in excess of eight hours was not allowed by the carrier.

The agreement effective August 1, 1945, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that under the provisions of Rule 14(b) reading:

"Employees paid under this rule who are required to work on designated holidays will be allowed additional compensation at pro

claim, indicating the holidays on which these men were called in to perform service and the additional payment they were allowed over and above their regular salary, all of which is provided by Rule 14(b).

Date	Name	Total No. of Hours Worked	Additional Payment Allowed
Jan. 1, 1951	McMinn, H. L.	8'00"	4'00"
Feb. 22, 1951	Webb, C. E.	8'00"	4'00"
May 30, 1951	McMinn, H. L.	9'30"	4'00"
July 4, 1951	Webb, C. E.	7'30"	4'00"
Sept. 3, 1951	Boice, D. C.	11'00"	4'00"
Nov. 22, 1951	Webb, C. E.	5'00"	4'00"
Dec. 25, 1951	Boice, D. C.	4'30"	4'00"
Jan. 1, 1952	Webb, C. E.	5'00"	4'00"
Feb. 22, 1952	Boice, D. C.	10'15"	4'00"
May 30, 1952	Webb, C. E.	6'00"	4'00"
July 4, 1952	Boice, D. C.	8'30"	4'00"
Sept. 1, 1952	Webb, C. E.	7'00"	4'00"
Nov. 27, 1952	Boice, C. E.	8'30"	4'00"
Dec. 25, 1952	Boice, C. E.	8'00"	4'00"

Since under the agreement rules the carrier is required to pay penalty payments, 2 hours minimum, 4 hours maximum, for service performed on holidays by employees subject to Rule 14, it should be quite obvious that these employees would not be called for holiday service unless it was absolutely necessary. The fact that the agreement is specific in setting out the method of payment to employees who are governed by Rule 14 for service performed on a holiday, and since the carrier has shown that the agreement was complied with in the instant case and the claimant has been paid all that is properly due him under the agreement rules, the carrier submits that the claim is without merit, lacks agreement support, and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Electrical Workers of System Federation No. 97 make this claim in behalf of Electrician D. C. Boice. Boice was a regularly assigned car lighting and air-conditioning inspector in carrier's mechanical department at Oklahoma City, Oklahoma, performing electrical work on passenger train equipment that was passing through or laying over. He was regularly assigned to work from 4:00 A. M. to 12:00 Noon, Monday through Friday and paid for this service at a monthly rate.

While designated holidays, which include Washington's Birthday, are considered days of rest carrier may, when need therefor exists in order to fully maintain its service, call such men to work. See Item 4 of Appendix B to General Agreement. The carrier called claimant to work on Friday,

February 22, 1952, Washington's Birthday. It had claimant work from 8:00 A.M. to 6:15 P.M. For this service, in addition to his regularly monthly rate, it paid him in accordance with Rule 14 (b) of the parties' agreement, which provides:

"Employees paid under this rule who are required to work on designated holidays will be allowed additional compensation at pro rata rate with minimum of two (2) hours, if required to work more than two (2) hours, a maximum of four (4) hours will be allowed."

The organization contends that under Memorandum of Agreement No. 5, effective March 1, 1951, which admittedly applies to claimant, he was entitled to time and one-half on all time he worked on February 22, 1952, in excess of eight hours, that is, for 2 hours and 15 minutes. Generally employees paid on a monthly basis are not allowed overtime for any time worked in excess of eight hours on any day. See Rule 14(a) of the parties' agreement. However, by Memorandum of Agreement No. 5, dated February 12, 1951, the parties, "in recognition of the peculiar circumstances and the irregular nature of the service required of occupants of these positions because of train schedules and operating conditions," supplemented the pay of "Axle Light and Air Conditioning Inspectors" under certain circumstances. Sections (a) and (e) of this agreement provide:

"Axle Light and Air Conditioning Inspectors paid under Rule 14 shall be additionally compensated for all time worked or held on duty in excess of eight hours per day continuous with their regular assigned hours or during the spread of the starting time and the close of their shift, Monday through Saturday, at one and one-half times their straight time rate."

"No overtime payments are to be made for time worked on any Monday through Saturday on which the employe does not actually render compensated service in excess of eight hours."

Thus when an employe coming within the classification to which Memorandum of Agreement No. 5 has application works in excess of eight hours on any day, Monday through Saturday, continuous with his regularly assigned hours he is entitled to time and one-half for such excess and the agreement makes no exception of holidays as such. Since claimant worked 2 hours and 15 minutes on Friday, February 22, 1952, to which this overtime provision has application the claim should be allowed accordingly.

AWARD

Claim 1 sustained.

Claim 2 sustained for 2 hours and 15 minutes of pay at one and one-half times the claimant's hourly rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1954.