

Award No. 1836
Docket No. MC-1340-86
2-IGN-I-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

W. H. ERWIN (Stationary Engineer)

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. Petitioner's right to work the 7 A. M. to 3 P. M. stationary engineer's shift in the Respondent's powerhouse at Palestine, Texas, was wrongfully taken from Petitioner by the Respondent.

2. Petitioner has been deprived of wages for each and every day Petitioner worked from 3 P. M. to 4 P. M. on the 3 P. M. to 11 P. M. shift as a stationary engineer in Respondent's powerhouse at Palestine, Texas, inasmuch that from 3 P. M. to 4 P. M. Petitioner was required to perform the same duties as a day stationary engineer and that a differential in pay existing in the sum of 26 cents per hour for each and every hour worked by Petitioner between 3 P. M. and 4 P. M.

3. Petitioner is entitled to overtime by virtue of having worked a 48 hour week with no overtime allowance on a monthly salary of \$335.46 from September 1, 1949 to the present time and pendente lite.

EMPLOYEE'S STATEMENT OF FACTS: That on or about July 7, 1919, petitioner was employed by the International-Great Northern Railway Company at Palestine, Texas, in what is known as the reclamation plant and store department. Thereafter on or about May 28, 1928, petitioner then being duly qualified as a stationary engineer was transferred to the mechanical department of said railroad, and has been employed in said department of the railroad in the powerhouse to the present time.

That at the time of the above mentioned transfer, three positions in the powerhouse were filled by stationary engineers: one shift operating from 7:00 A. M. to 3:00 P. M., a second shift operating from 3:00 P. M. to 11:00 P. M., and a third shift operating from 11:00 P. M. to 7:00 A. M. That at the time of the said transfer and for approximately ten years prior thereto, the said three shifts in the power house were filled by stationary engineers which was the policy of the employer in co-ordination with union rules as will hereinafter set forth with particularity.

That at the time of petitioner's transfer, he was assigned to the 3:00 P. M. to 11:00 P. M. shift, but at various times between 1928 and 1934,

shall hereafter apply to the sixth day of the work week. Where employes do not now have a bulletined or assigned rest day, ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week.

The weekly or monthly rates payable to such employes effective September 1, 1949 shall be the rates in effect August 31, 1949 reduced by 56 cents per week or \$2.43 per month.

The straight time hourly rate for such employes shall be determined by dividing the monthly rate by the number of hours comprehended in such rate in effect on and after September 1, 1949.

Future wage adjustments, so long as such rates remain in effect on such basis, shall be made on the basis of the hours comprehended in the rate in effect on and after September 1, 1949.

Except as specifically provided in this paragraph (d), the rules applicable prior to September 1, 1949 to the employes covered by such paragraph shall continue without change."

It is believed that the foregoing will clearly explain the method of compensating petitioner on his position of stationary engineer, and, further, will satisfy and conclusively convince your Board that there is no basis for that part of the claim set forth in paragraph numbered 3 at page 2 of petitioner's notice to your Board.

Based upon the foregoing record it is the position of carrier that there is no basis in fact for any part of petitioner's contentions and claims as here presented to your Board and, therefore, all contentions of petitioner should be dismissed and the accompanying claims accordingly 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 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.

Stationary Engineer W. H. Erwin personally filed this dispute with the Second Division, National Railroad Adjustment Board. It consists of three separate claims. We shall consider each of the claims separately but before doing so shall discuss what is in effect an application on the part of the claimant asking the Division to release (dismiss) his claim. It should be understood the claimant has never filed an unqualified dismissal or request for dismissal thereof.

After the claimant and carrier had each filed their ex parte submissions the Division set the dispute for hearing at 10:00 A. M. on Monday, March 22, 1954, and gave notice of that fact to all parties interested therein. Claimant appeared at this hearing and requested a continuance thereof. His request was granted. He was thereupon given forty-five days in which to file a rebuttal submission. On April 26, 1954, before the forty-five days granted had expired, claimant filed a letter with the Division asking it to release the controversy. It is apparent from the contents of this letter that claimant made this request because he had become aware that he and his attorney had not been entirely familiar with the Rules of Procedure adopted by the National Railroad Adjustment Board and this Division as they relate to the control of proceedings before it. See Rules of Procedure contained in Circular No. 1, issued by the National Railroad Adjustment Board on October 10, 1934 and

a Resolution adopted by this Division on March 27, 1936. These Rules of Procedure were adopted pursuant to authority of the Railway Labor Act. See Section 3, First (i) and (u) thereof.

On May 6, 1954 the Division, in effect, denied the claimant's request to dismiss his claim when, by letter of that date which was sent to claimant with the Division's approval, it notified him it considered that its Rules of Procedure permitted it to proceed to make an award on his claim after the expiration of the forty-five days it had granted him in which to file his rebuttal.

Thereafter, on May 12, 1954, claimant again advised the Division he was objecting to its making an award in the controversy, setting out his reasons therefore, and again asked it to release (dismiss) his case. No action was ever taken on this request before the Division deadlocked the dispute. A referee was then agreed upon and appointed to sit with the Division as a member thereof and make an award. A request for a hearing before the referee was granted. It was set for September 10, 1954 at 10:00 A. M. and the parties notified thereof.

On July 31, 1954 claimant filed his rebuttal submission with the Division and in his letter accompanying this submission requested the Division to consider his claim on its merits. The effect of such request was to withdraw his former request to have his claim dismissed. By reason thereof we find the claim to be submitted on its merits.

Claimant's first contention is that carrier wrongfully denied him the right to work the 7:00 A. M. to 3:00 P. M. shift in its powerhouse at Palestine, Texas. Claimant refers to this position as that of "Stationary Engineer" but it has, during all times herein material, been classified by the carrier as that of "Generator-Motor Attendant." We shall hereafter refer to it as such.

Claimant was employed by carrier on July 7, 1919 at Palestine, Texas. On May 28, 1928 he was transferred to the Mechanical Department of carrier as a stationary engineer, he having qualified for that rating. On October 19, 1929 he was assigned to the position of stationary engineer in carrier's powerhouse at Palestine with hours of duty from 3:00 P. M. to 11:00 P. M. The position of stationary engineer is now covered by the Firemen and Oilers' agreement. During all times herein material claimant has been regularly assigned to and has occupied the position of stationary engineer to which he was assigned on October 19, 1929.

The 7:00 A. M. to 3:00 P. M. position in carrier's powerhouse at Palestine, Texas, which is the position herein involved, was in 1919 classified as belonging to electrical workers. It has at all times since then been covered by carrier's agreements with organizations representing electrical workers. See currently carrier's agreement with System Federation No. 14, Railway Employees' Department, A. F. of L., Mechanical Section thereof, which includes the International Brotherhood of Electrical Workers.

It is true that the foregoing agreement provides that it does not include the work of operating "water service motors." See Rule 99. However, this provision is intended to exclude motors in the Water Service Department which are operated by Water Service Department employees. These employees are under an agreement between carrier and its Maintenance of Way Employees. No such motors are used by carrier in its power plant at Palestine. But even if they were such fact would not help claimant as he would have no rights to the operation thereof.

On October 27, 1929 C. B. Heidbrink, a stationary engineer, was placed on this position and remained thereon until February 17, 1942 when he retired and it was filled by carrier by assigning C. H. Linn, an electrician, thereto. Linn is apparently still holding down the position. From 1929 up until sometime in 1934 carrier used claimant to fill any temporary vacancies on the generator-motor attendant position. In 1934 a committee representing

the electrical workers complained of this fact and thereafter carrier properly used an electrician to fill such temporary vacancies.

We have come to the conclusion that the position of generator motor attendant in the powerhouse at Palestine, Texas, with hours of duty from 7:00 A. M. to 3:00 P. M. does not come under the Firemen and Oilers' agreement and consequently claimant neither had nor has any seniority rights thereto. Nor do we think the fact the carrier improperly used claimant to fill temporary vacancies thereon during the period from 1929 to 1934 gave claimant any vested rights to be used to fill temporary vacancies occurring thereon at any time thereafter. Nor did this fact give him any right to the position itself when it became vacant on February 17, 1942. Such practice could not and did not abrogate provisions of the electrical workers' agreement with the carrier.

There has always been a twenty-six cent hourly differential in pay between this generator-motor attendant position, hours from 7 A. M. to 3:00 P. M. and the stationary engineer position occupied by claimant. Claimant contends that between 3:00 P. M. and 4:00 P. M. the duties of his shift are the same as that of the generator-motor attendant position and that, because thereof, he is entitled to the differential for this hour of work. We find from the record that between the hours of 3:00 P. M. and 4:00 P. M. claimant does not perform any duties other than those normal to the position of stationary engineer, which is the position he occupied. Consequently he is not entitled to any differential in pay for this hour of service.

Claimant further contends he is entitled to overtime by virtue of having worked forty-eight hours a week with no overtime allowance on his monthly salary of \$335.46. He makes this claim retroactive to September 1, 1949, the date the 40-hour week went into effect.

Nothing is set out in claimant's submission to support this contention other than the statement of the claim itself. Carrier has set forth how the monthly rate is arrived at. We are of the opinion that claimant's monthly rate, considering the number of hours he regularly works, has been properly computed in accordance with the requirement of the 40-hour week agreement.

In view of the foregoing we find all of claimant's contentions to be without merit and that consequently his claim should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1954.