

Award No. 1940
Docket No. 1767
2-GC&SF-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (CARMEN)**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carmen C. A. White, P. R. Macy, and B. W. Cain on June 15 and 16, 1953, were denied their contractual seniority rights; that Carmen Odell Hass, Carl Reavis and J. T. Allison on June 18, 1953 were denied their contractual seniority rights.
2. That accordingly the Carrier be ordered to:
 - a) Make these employees, Carmen C. A. White, P. R. Macy and B. W. Cain whole by compensating them each additionally for eight (8) hours at the applicable overtime rate for each day, June 15 and 16, 1953.
 - b) Make these employees, Carmen Odell Hass, Carl Reavis and J. T. Allison whole by compensating them each additionally for eight (8) hours at the applicable overtime rate for June 18, 1953.

EMPLOYEES' STATEMENT OF FACTS: The following carmen, hereinafter referred to as the claimants, are regularly employed, bulletined and assigned at Fort Worth, Texas—a separate seniority point—as hereinafter set forth:

"Name	Occupation	Assigned Hours	Assigned Work Week
C. A. White	Car Inspector	7 AM to 3 PM	Tuesday through Saturday
P. R. Macy	" "	3 PM " 11 PM	Wednesday " Sunday
B.W. Cain	Lead Carman	8 AM " 12 Noon	
		12:30 " 4:30 PM	Wednesday " Sunday
Odell Hass	Car Inspector	11 PM " 7 AM	Friday " Tuesday
Carl Reavis	" "	3 PM " 11 AM	Friday " Tuesday
J. T. Allison	" "	11 PM " 7 AM	Thursday " Monday"

These claimants all have established seniority in the Fort Worth, Texas seniority district.

point to augment the force at another point under Rule 11 to temporarily handle additional or extra work, which could not be handled by the regular force during assigned hours. In fact, there have been many instances where employes have been sent from Cleburne to Fort Worth, as well as other points, to perform temporary service under the provisions of Rule 11 of the current agreement, without any protest or claim having been submitted by the employes.

It is a prerogative of the carrier to determine whether it shall augment its force or work employes on an overtime basis to perform extra work.

Without prejudice to its position, as previously set forth herein, the carrier desires to call attention to the fact that the claim in behalf of each claimant is for payment at the "applicable overtime rate," which the carrier construes as meaning at time and one-half. It is a well established principle, consistently recognized and adhered to by both the Second and Third Divisions of the National Railroad Adjustment Board, that the right to work is not the equivalent to work performed under the overtime and call rules of an agreement.

See Second Division Award No. 1601, from which the following excerpt is quoted from the Findings of the Board:

"We think also that the pro rata rather than the overtime rate is the proper one to apply to the two hours and forty minutes. We follow the principle set forth in many previous awards of this Board that, when some employe other than a claimant has performed at a pro rata rate work properly belonging to the claimant at an overtime rate, the pro rata rate is sufficient to penalize the carrier and to make whole the claimant, who actually did not perform the work."

also Third Division Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

In conclusion, the carrier respectfully asserts that the claim of the employes in the instant dispute is entirely without merit or support under the agreement rules and should be denied in its entirety.

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.

This claim involved the same issue raised in Docket No. 1766, determined by Award No. 1939 and is controlled by that award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1955.