Award No. 1974
Docket No. 1850
2-Pull-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Electrician C. W. Alfred was improperly compensated for services which he rendered on June 21, and 22, 1954.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid employe the difference between the compensation he was paid for the hours of 8:30 A. M. June 21st to 5:00 P. M. June 22, 1954, at the appropriate overtime rates.

EMPLOYES' STATEMENT OF FACTS: Electrician C. W. Alfred, hereinafter referred to as the claimant, is employed as an electrician at New Orleans, Louisiana. His assigned hours were 8:30 A. M. to 5:00 P. M.

On June 21, 1954, the claimant worked his regular hours from 8:30 A. M. to 5:00 P. M. The carrier then called him back to work and he reported for work at 11:45 P. M. June 21, 1954. The claimant as a result of this assignment was not relieved from duty until 5:00 P. M. June 22, 1954.

The carrier compensated the claimant for these hours of service as follows:

"June 21— 8:30 A.M. to 5:00 P.M. — 8 hours at straight time rate.

June 21—11:45 P.M. to June 22nd 7:45 A.M. — 8 hours at time and one-half rate.

June 22— 7:45 A.M. to 8:30 A.M. —¾ hours at double time rate.

June 22— 8:30 A.M. to 5:00 P.M. — 8 hours at straight time rate."

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier in the instant dispute violated the provisions of the current agreement and they should have paid the claimant as follows:

required that the employe in behalf of whom the claim was filed be paid for work performed beyond the sixteenth hour following the beginning of the employe's regular shift even though he worked less than 16 hours since the beginning of his shift. In its award, the Board pointed out that in the proceeding involving The Pullman Company and its carmen (the dispute culminating in Award 1671) the representative of the electrical workers interpreted the provisions of Rule 34 in the same manner as The Pullman Company and other carriers and that this interpretation represented the traditional application given this type of provision.

The Board also pointed out that the literal interpretation of the double time rule referred to in Award 1671, and upon which interpretation the organization apparently was basing its position in the dispute presently under consideration, was inconsistent with other agreement rules (Rules 31 and 33) and that it was a well-established principle that a contract should be considered in its entirety so that its several provisions would be interpreted in a manner not inconsistent with each other.

Under **OPINION OF BOARD** in Award 1867 the Board held that the company's position that the employe involved was entitled to double time beginning at 6:00 P. M., July 10, 1953 (after 16 hours of work performed, not clock hours as claimed by the organization). On this point the Board stated as follows:

> "In our judgment, the history of the type of provision here in question, and the present Rule 34 considered in conjunction with related provisions of the Agreement, require the finding that an employe is entitled to be paid at the double time rate only for work performed beyond 16 hours of service, computed from the starting time of his regular shift. It follows that claimant should have been paid at the double time rate beginning as of 6:00 P. M. on July 10, 1953, or a total of 27 hours at double time for the period in question."

CONCLUSION

In this ex parte submission the company has shown that it properly has interpreted the provisions of Rule 34 of the agreement. Further, the company has shown that prior to the rendering of Award 1671 by the Second Division, National Railroad Adjustment Board, the organization put itself on record as interpreting and applying the provisions of Rule 34 in the same manner as the company is in the instant case. Finally, the company has shown that Awards 1671 and 1867 support the company in this dispute in that both awards state that the 16-hour provisions of the overtime rules involved relate to intermittent as well as continuous service, a condition which clearly contemplates that only hours worked shall constitute the 16-hour period beyond which double time shall begin. The organization's claim that Electrician Alfred is entitled to double time beginning 12:30 A. M., June 22, 1954, instead of 7:45 A. M., is without merit 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 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.

The record shows that claimant's regular bulletined hours are 8:30 A. M. to 5:00 P. M. After working his regular shift he was called back in service the same day at 11:45 P. M., and remained therein until 5:00

P. M. the next day. The company paid claimant the time and one-half rate for service performed during the next succeeding eight hours from 11:45 P. M., or until 7:45 A. M.: double time from 7:45 A. M. to 8:30 A. M., and straight time from 8:30 A. M. to 5:00 P. M., his regular shift hours. Subsequently, the company acknowledged liability for double time for the second day period, 7:45 A. M. to 5:00 P. M., on the grounds that by 7:45 A. M. the claimant worked sixteen hours.

The organization, relying upon Rule 34, construes it to require payment at time and one-half rate from 11:45 P. M. to 12:30 A. M., and at the double time rate thereafter. Rule 34 provides:

> "All service performed beyond 16 hours, computed from the starting time of the employe's regular shift, shall be paid for at the rate of double time.
>
> If an employe renders service beyond 24 hours, computed from the starting time of his regular shift, double time payment shall be continued, unless the employe is released at his own request."

The issue before us is whether the claimant's break in service from 5:00 P. M. to 11:45 P. M., should or should not be included in computing and applying the sixteen-hour double time provision of the rule. The company contends that the rule requires that sixteen hours of service be performed before double time is effective. This would start the running of the second eight-hour period at the time claimant returned to duty, which was 11:45 P. M. The organization measures the point of applicability by the clock which would bring the double time liability into play at 12:30 A. M., the second day, which it shows is sixteen hours from the starting time of claimant's regular shift, 8:30 A. M.

Both parties to this dispute cite Award No. 1671 of this Division in support of their respective positions. A reading of the submission, subject of that award, reflects that at that time the Carmen's Organization accepted the carrier's action in tolling the sixteen hour time period during the hours claimant was off duty and picking up the same from the hour that he returned to duty. The differences between the parties in the earlier submission can be briefly summarized as follows:

> The company contended that the double time rule was not involved and it proceeded to compensate the claimant there under Rule 5, the overtime rule, at the rate of time and one-half until the time of commencement of his regular shift the following day, at which time the company dropped back to the straight time rate. The organization disagreed, contending for and obtaining by the award payment at the double time rate after sixteen hours of service had been performed. The period he was off duty was excluded from the computation of the sixteen hour period by tacit agreement as we have previously noted.

By sustaining the claims in the earlier submission, we simply resolved the above-summarized differences. The question now presented was not before us for decision in Award No. 1671. Therefore, any observations made therein concerning the full import of the rule were gratuitously made and constituted dicta and therefore are of no precedent value to either party herein, however respectful we are of the opinion of the distinguished jurist who assisted with that award.

A few months after the issuance of Award No. 1671, claim was made upon behalf of Electrician Fay of the Omaha District. Therein the identical issue appearing here was raised for the first time on this property. Our Award No. 1867, decided with Referee assistance, upheld the company and confined the sixteen hour provision of Rule 34 to the time worked, thus

rejecting the organization's clock hour theory of interpretation suggested by the dicta in the earlier Award.

We have examined the docket in case subject of Award No. 1867 and find that in all its essentials it is an identical dispute. In that submission the same awards are cited and the same arguments made. While we do not subscribe to all of the reasoning appearing in that opinion, we find no glaring error in the Award such as to justifying reversal. Further, it is consistent with past understanding of the organization as to the method of computing time under such circumstances and the rule is not so clear of meaning as to render that fact immaterial. As stated in paragraph 5 of the memorandum to accompany Award No. 1680, Third Division:

> "If a case is presented involving the same controlling facts and the same rule as were involved in a previous award, and the same data and material arguments are presented as were presented in the previous case, the Award in the previous case should be followed. * * * For in such a situation there is nothing new which has not been passed upon and taken into account before, and the only question is whether the personal judgment of the later referee * * * should be substituted for that of the former referee."

A contrary course to that followed here would leave the parties in a state of uncertainty and encourage the deadlocking of future cases. A denial award is called for under the circumstances here present.

AWARD

Claim denied, except that the company shall compensate claimant at double time rate, pursuant to its offer, from 7:45 A. M. to 5:00 P. M., on June 22, 1954.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1955.