

Award No. 2123

Docket No. 1953

2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter 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 at the Cincinnati District on August 23, 1954, the Pullman Company violated the controlling agreement when one of their representatives failed to properly distribute overtime.

2. That Electrician H. P. Heidotting be compensated for the time that Electrician V. Costa was assigned to work overtime, that is five hours at the overtime rate.

EMPLOYES' STATEMENT OF FACTS: At the Cincinnati District on August 23, 1954, it was necessary to work an Electrician overtime to exchange the Change-Over Switch on Pullman Car Pulaski County. Assistant Foreman H. C. Roberts knew that the overtime was being assigned from an overtime list, but instead of assigning Electrician Heidotting who was the top one on the overtime list, he assigned Electrician Costa who was seventh on this list.

Electrician V. Costa exchanged the Change-Over Switch on car Pulaski County which took him five hours.

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

POSITION OF EMPLOYES: That the Pullman Company violated Rule 36 of the controlling agreement when one of their representatives failed to properly distribute overtime in accords with the method used in the Cincinnati District. The method used in distributing overtime was for management to contact the electrician whose name appears on the top of the overtime list. Rule 36 reads in part as follows:

"Distribution of Overtime. All time worked outside of bulletined hours shall be distributed as equally as possible between the employes involved."

shift was used the time involved at the rate of time and one-half would be a one hour period (5:30-6:30 P. M.).

Support for the company's position that except in so far as it has restricted itself by the collective bargaining agreement or as it may be limited by law the assignment of work necessary for its operations lies within the company's discretion is contained in Third Division Awards 2491, 3973, 5331, 6270 and 6384. The fact that in the instant case additional trouble was involved in connection with the performance of the work which increased the contemplated overtime from 45 minutes to 5 hours is not pertinent to the issue in this dispute. Management did not assign the work in question on the basis of unknown factors and made the assignment under the provisions of Rule 31 "Overtime" and Rule 36 "Distribution of Overtime". To have applied the provisions of Rule 33 "Calls", which rule is applicable to an employee who receives a call rather than to an employee whose overtime involves his remaining on duty beyond the close of his regular shift, would have been illogical and unreasonable.

The company submits that management's practice of distributing overtime "as equally as possible" is in accordance with the meaning and intent of Rule 36. The organization's interpretation of Rule 36 is improper in that it would render the language of the Rule providing that overtime shall be distributed "as equally as possible" inoperative and without meaning.

Finally, even if Costa properly should not have been assigned to perform the work in question the company does not agree with the organization's contention that it is required to pay Electrician Heidotting at the rate of time and one-half. Numerous awards of the Second Division, National Railroad Adjustment Board, hold that the proper rate for work not performed is the straight time rate. (See Awards 1269, 1530, 1601, 1622, 1625 and 1705).

CONCLUSION

In this ex parte submission the company has shown that the organization improperly has interpreted the provisions of RULE 36. Also, the company has shown that the rule does not give an employee a fixed right to perform a specific overtime assignment but contemplates that overtime shall be distributed "as equally as possible".

The claim in behalf of Electrician Heidotting 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 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 this dispute were given due notice of hearing thereon.

On August 23, 1954, carrier's District officials at Cincinnati, Ohio, were informed that car Pulaski County was arriving on train 205 at 5:40 P. M. with a bad changeover switch. Electrician V. Costa, who had worked the 9:00 A. M. to 5:30 P. M. shift was assigned to perform the work on an overtime basis. The claimant, who had completed his tour of duty at 4:30 P. M., contends that the overtime should have been assigned to him because he was ahead of Costa on the overtime list. The controlling rule states in part:

"All time worked outside of bulletined hours shall be distributed as equally as possible between the employees involved. * * *"
Rule 36.

The record shows that carrier estimated that the work would take 45 minutes when it in fact took 5 hours. It is admitted, also, that claimant was ahead of Costa on the overtime list. We point out, however, that the rule does not require a meticulous compliance with any precise formula. It does not contemplate that overtime will be assigned on a day to day or rotary basis. The rule simply requires that it be distributed as equally as possible. The carrier is free to vary its handling of overtime and a claim for its loss can be made only when it can be shown that carrier has failed to give effect to the words "as equally as possible" over a period of time. Cost and convenience may be taken into consideration by the carrier. The record does not indicate that claimant has not been receiving his fair share of the overtime worked over any substantial period of time. It is not shown that claimant has suffered a loss of overtime or that future assignments will not equalize his overtime with others, including Costa, on the overtime list. Award 2035.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1956.