

Award No. 3153
Docket No. 2993
2-PULL-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That The Pullman Company violated the controlling agreement when they improperly changed the working hours of Electrician E. Pontickio on May 3, 4, and 5, 1957, for the purpose of off-setting overtime.

2. That they failed to properly compensate Electrician Pontickio for service performed on May 2, 3, 4, 5, and 6, 1957, in accord with the controlling agreement.

3. That accordingly Electrician E. Pontickio be compensated in accord with the claim submitted to Foreman R. Bucherati on June 28, 1957.

EMPLOYEES' STATEMENT OF FACTS: On April 25, 1957, Foreman R. Bucherati addressed a letter to Electrician E. Pontickio reading as follows:

"In reference to your assignment to work at Louisville during The Derby Travel out of that point.

This is to advise that you will leave Penn. Terminal on Train No. 33 on Thursday, May 2, 1957.

The following will be your working schedule:

Friday, May 3, regular shift will be 12:00 Mid. to 8:00 A. M.
Saturday, May 4, regular shift will be 4:00 P. M. to 12:00 Mid.
Sunday, May 5, regular shift will be 9:00 A. M. to 5:00 P. M.
Monday, May 6, regular bulletined hours at home station.

The time shown above is Central Standard Time."

and some logical theory on the basis of which some conclusion could be reached. In the instant case the organization has not assumed this responsibility. In Third Division Award 4011 (Jay S. Parker, Referee) the Board stated "The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance." Awards 5418, 4758, 3523, 3477, 2577.

CONCLUSION

In this ex parte submission the company has shown that management properly changed Electrician Pontickio's regular bulletined hours under the provisions of Rule 23 and that such irregular service was correctly paid under the provisions of **Rule 28. Service Away from Home Station**. Additionally, the company has shown that the organization has failed to present a logical theory which would permit the allowance of the claim. Finally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The organization's claim in behalf of Electrician Pontickio 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.

Parties to said dispute were given due notice of hearing thereon.

Two distinct issues are presented by this claim. The first arises from the employes' contention that it was a violation of the agreement to change the claimant's bulletined hours to other than the existing bulletined hours at Louisville when he was sent there temporarily. Rule 23 does not so provide. It simply provides for notice or premium pay to an employe whose bulletined hours are changed temporarily or permanently.

The employes rely on a written statement by H. R. Lary, dated October 6, 1952, to Regional Managers, Shop Managers, Superintendents and Agents to show that such was the agreed to procedure under that rule, but the statement does not mention the bulletined hours existing at away-from-home station. They also rely upon a question and answer interpretation of a different agreement between other employes and the company. Such an interpretation of another agreement has no applicability to this agreement. Thus that contention cannot be sustained.

The second issue arises from the employes' contention that unpaid time while traveling, under Rule 28, is service performed for application of Rule 34. That latter rule provides for double time rate for "all service performed beyond 16 hours". Rule 28 provides in part that, "if while traveling, the employe is relieved from duty for a period of 5 or more hours, between 10:00 P. M. and 8:00 A. M., and afforded an opportunity to go to bed, such relief period shall not be paid for". We think it obvious that one who is thus relieved from duty is not performing service.

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 March, 1959.