

Award No. 4370
Docket No. 4355
2-AT&SF-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current Agreement, Electronic Technician M. C. LaSalle, was unjustly dealt with and the terms of the Agreement were violated when the Carrier refused to assign Mr. LaSalle his rightful turn of overtime on September 5, 1960 (Labor Day.).
2. That accordingly the Carrier be ordered to:
 - (a) Compensate Mr. LaSalle for eight (8) hours at his regular time and one/half rate, and
 - (b) to take the necessary steps and provisions to alleviate the discrepancies of overtime at their 8th Street Coach Yard Radio Shop in Los Angeles, and
 - (c) to make every effort to comply with the provisions of Rule 10 (b) of the current Agreement, in the future.

EMPLOYEES' STATEMENT OF FACTS: Electronic Technician M. C. LaSalle, hereinafter referred to as the claimant, is a regular hourly rated employe of the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, at their 8th Street coach yard radio shop in Los Angeles, California. The claimant works as a non-licensed electronic technician. The claimant's work week is Monday through Friday, with Saturday and Sunday as rest days. His duties consist of checking, repairing, removing, and replacing component parts of radio and music equipment on engines, passenger cars and cabooses. On Monday, September 5, 1960, Labor Day, the claimant was denied the right to work his regular job on an overtime basis. Although the claimant had less hours of overtime than the licensed electronic technician who was assigned to work this day.

the employes' claim is excessive in that it seeks payment at the time and one-half rate of pay, contrary to the well known and firmly established principle of this and other Divisions of the National Railroad Adjustment Board that the proper compensation for work not performed is the pro rata rate.

* * * * *

In conclusion, the carrier respectfully reasserts that the employes' claim in the instant dispute is entirely without support under the governing agreement rules and should be denied in its entirety for reasons previously set forth herein.

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.

This Division has before it for decision the same question that was presented in Award 1879. There it was said:

"Organization contends that carrier improperly assigned a licensed electronic technician on overtime to fill a vacancy created by absence of a non-licensed electronic technician due to vacation. The controlling agreement (Memorandum No. 8 thereof) sets forth the type of work for which licensed electronic technicians are used. It is further provided that non-licensed electronic technicians may be assigned to perform all the work specified for the licensed group, except with respect to that work for which a Federal Communications Commission license is required. It follows that both categories of employes may, and do, perform work which does not require a F.C.C. license. Both licensed and non-licensed technicians have seniority in the electronic technician class but employes assigned to non-licensed positions are 'not permitted to exercise such seniority over any licensed employe in that classification'. (Section A 5, Paragraph b, Memorandum No. 8.)

"We are unable to find carrier has violated the agreement in this instance. The organization refers to agreement General Rule 10(b), which reads:

'Overtime will be distributed equally among the employes of each shift by crafts, qualification of the employe to do the work to govern.'

"There is no evidence in the record, however, that carrier was making an unequal distribution of overtime during the period in question. Nor can we say that by filling in for a non-licensed electronic technician a licensed man is working outside his classification or craft. We have seen that the work jurisdiction of a licensed techni-

cian is co-extensive with that of a non-licensed man, and covers licensed work as well. The underlying premise of the claim is that these two groups of employes have mutually exclusive scope rules, but such premise is not supported by the agreement.”

In the above dispute the claim was denied and the Board can find no reason for rendering an adverse award in the instant dispute.

Accordingly, we hold that the instant claim be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December, 1963.