

Award No. 4372
Docket No. 4357
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 EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current working Agreement, the Carrier erred when they failed to maintain equal distribution of overtime in the Radio Shop at Los Angeles.
2. That accordingly the Atchison, Topeka & Santa Fe Railway Company be ordered to:

(a) Properly compensate non-licensed Electronic Technician Mr. J. M. Moses eight (8) hours at his regular time and one-half rate for the date of December 26, 1960.

(b) Assign non-licensed Electronic Technician Mr. J. M. Moses, such overtime as he may be qualified to perform, as the Atchison, Topeka and Santa Fe Railway Company may need performed in or at the Los Angeles Radio Shop until his overtime hours are equal to other Electronic Technicians employed in or at the Los Angeles Radio Shop.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. M. Moses is an electrician, assigned as a non-licensed electronic technician, hereinafter referred to as the claimant, is regularly employed by the Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, as an electrician, assigned to the coast lines communications department, Los Angeles radio shop. This Los Angeles radio shop, maintains radio communications equipment in and around Los Angeles and San Diego. They also repair and maintain music equipment on the Super Chief Trains 17 and 18 and El Cap 21 and 22 passenger trains, plus other radio, music, electronic and television equipment owned and operated by the carrier in and around Los Angeles and San Diego.

ploye to do the work. . . ." The solution to the problem as far as Claimant Moses is concerned is for him to secure a second class F.C.C. License and thereby qualify for the work he claims, and until he does, he has no legitimate complaint or claim; he has been given an equal portion of the overtime allowed non-licensed technicians.

* * * * *

Without prejudice to its position as stated hereinabove, that the claim of the employes in the instant dispute should be denied, carrier asserts that the Item 2(a) of 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.

Furthermore and as previously stated, Item 2(b) of the employes' claim has never been filed or handled on the property, but was first presented in appeal to this Board in letter dated August 23, 1962, of President Michael Fox of the Railway Employees Department to the Executive Secretary of the Second Division, National Railroad Adjustment Board, and that item is accordingly barred from consideration. The Adjustment Board has repeatedly recognized and held that claims may not be broadened or amended when presented to the Board from that which was presented and progressed on the property.

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.

The instant dispute involves the same principle and parties and essentially the same factual situation as in Award No. 4370 and the Board holds that Award to be controlling. Accordingly, the claim is 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.