

Award No. 6308
Docket No. 6185
2-A&S-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE ALTON & SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly compensated Carmen Peach, Stewart, Klein, Kaemmerer, Wilkie, Horvath, Schlemmer, Wright, Hoffman and Thurston for service rendered on various dates in September and October, 1966.

2. That accordingly, the Carrier be ordered to additionally compensate each in the amount of twelve and one-half (12½) cents per hour at the time and one half rate as follows:

(a) Carman Peach — eight hours each day, September 13, 14, 16, 19, 22, 23, 29, 30, October 3, 7, 11, 12, 13, 16, 17, 18, 20 & 21, 1966.

(b) Carman Stewart — eight hours each day, October 3, 4, 5, 11, 12 & 19, 1966.

(c) Carman Klein — eight hours each day, September 21, October 12, 17 & 20, 1966.

(d) Carman Kaemmerer — eight hours each day, September 19, 22, 24, October 21 & 28, 1966.

(e) Carman Wilkie — eight hours each day, October 18, 19, 20 & 21, 1966.

(f) Carman Horvath — eight hours each day, September 29, October 7, 11, 12 & 16, 1966.

(g) Carman Schlemmer — eight hours September 23, 1966.

(h) Carman Wright — eight hours October 27, 1966.

(i) Carman Hoffman — eight hours each day, September 16, October 28, 1966.

(j) Carman Thurston — eight hours each day, September 13 & October 11, 1966.

EMPLOYEES' STATEMENT OF FACTS: Carmen Peach, Stewart, Klein, Kaemmerer, Wilkie, Horvath, Schlemmer, Wright, Hoffman and Thurston, hereinafter referred to as the Claimants, are employed by the Alton and Southern Railway Company, hereinafter referred to as the Carrier, as Car Inspectors regularly assigned to positions which carry the differential rate of pay of twelve and one-half (12½) cents per hour above the freight Carman's rate for using two-way portable radios.

On the dates listed in the Statement of Claim the Claimants were used to augment the force of Carmen on the repair track for which they were paid at the freight Carman's rate of pay of \$2.9678 instead of the rate of \$3.0928 to which they were regularly assigned.

As a result of Carrier's contentions, this is the fourth time that such dispute has been submitted to your Board. One of the three previous disputes submitted to your Board was denied in award 5631 solely for lack of proof. The other two disputes were sustained in Awards 5440 and 6130.

This dispute has been handled with Carrier officials up to and including the highest officer designated by the Company, with the result he has declined to adjust it.

The agreement effective January 29, 1947 as subsequently amended, is controlling.

POSITION OF EMPLOYEES: The Employees and the Carrier reached an agreement on date of March 11, 1966 providing for a 12½ cents per hour differential for using two-way portable hand radios. Copy of that agreement is attached hereto and identified as Employees' Exhibit "B."

That agreement provides in pertinent part as follows:

"Management will designate the positions on which carmen will be required to use portable radios. When it is established that a regularly assigned carman's position will normally require the use of radio, bulletins advertising vacancy on such position will so indicate and will stipulate the rate of pay."

Immediately after that agreement was reached all train yard Car Inspectors' positions were assigned to use the radio. Bulletin was posted March 23, 1966 so advertising all Car Inspectors' positions, designating the rate of pay as \$3.0928 per hour. Copy of that bulletin consisting of three pages is attached and identified as Employees' Exhibit "C."

Attached hereto and identified as Employees' Exhibit "D," consisting of two pages, is copy of assignment Bulletin No. 6A-66 dated April 7, 1966, showing Claimants Peach, Horvath, Wright, Klein, Wilkie, Kaemmerer and Thurston being award positions which carry the Radio Rate as advertised in Bulletin No. 5-66 dated March 23, 1966. Attached and identified as Employees' Exhibit "E," consisting of two pages, is copy of assignment Bulletin No.

in those other disputes upon which the Board has ruled in the past, Rule 10 does not and did not apply. There was no need to liberate a parade of horrors and consider the question of what would happen if the claimants had been forced to work the overtime. In these disputes, claimants were not forced — were not required — to fill the place of other employees.

This Board has been asked to expend an inordinate amount of time on what Carrier believes to be a very straightforward proposition: that Carrier be allowed to compensate its employees in accordance with terms of existing agreements. Claimants in this case voluntarily performed overtime work as carmen. Such performance is compensated at the rate of one and one-half times the basic carmen's rate. Claimants were so compensated. Had they been required to carry or use radios, claimants would have been entitled to additional compensation as claimed. They were not required to carry or use radios. There is no basis for additional compensation and the Employees' claim in this dispute 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.

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

After carefully considering the record in this case, we will follow prior Awards of this Division, i.e., 5440, 5631 and 6130, which involved these same parties and similar issues and sustain this claim for as was stated in Second Division Award No. 6113 (Referee Simons):

"Reference is made to Third Division Award No. 10911, which succinctly states the following:

'When the Division has presumably considered and disposed of a dispute involving the same parties, same rules and similar facts presenting the same issue as is now before the Division, a prior decision should control. Any other standard would lead to chaos.

'* * * in the absence of any showing that (previous) Awards are patently erroneous (and no such showing was made) we must follow them.'

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.

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