

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: ((International Brotherhood of Electrical Workers
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Southern Rwy. Co./Louisiana & Arkansas Rwy. Co. by their arbitrary actions reduced Electrician D. D. Tyler's eight (8) hour work day of his regular assignment on September 4, 1990 and, thus, his five (5) day work week to which he is entitled under Rules 1 and 2 (a) of the April 1, 1980 controlling agreement; and, misapplied Rule 8(a) of the same controlling agreement when they laid him off from four (4) working hours of his regular assignment on September 4, 1990 to equalize the overtime he worked at Shreveport, Louisiana.

2. That accordingly, the Kansas City Southern Rwy. Co./Louisiana & Arkansas Rwy. Co. be ordered to compensate Electrician D. D. Tyler four (4) hours at the straight time rate for September 4, 1990.

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 employes 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 waived right of appearance at hearing thereon.

The relevant facts show that the Claimant worked overtime from 12 Midnight until 8:00 A.M. At 8:00 A.M., he began his regular shift. After he worked four hours of his regular shift, he was told to check-out, because during his overtime hours, he had operated a locomotive. That task or function is "Covered Service" under the Hours of Service Act and, accordingly, he could only work a maximum of twelve hours. The Carrier basically claims that there is no provision in the Agreement that would entitle the Claimant to pay for time not worked because of the Hours of Service Act requirements.

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Docket No. 12380
92-2-91-2-224

Past Awards have held, under similar facts and circumstances as we find in this claim, that the Claimant is entitled to pay for a full day. (See, among others, Third Division Award 28578.)

The Carrier knew that the Claimant's overtime tour was consecutive with his regular assignment. When it assigned the Claimant to moving the locomotive, that assignment put him in conflict with the Hours of Service Act. On the basis of past Awards, he is entitled to pay for the hours lost. Therefore, in this case, he is to be paid for four (4) additional hours.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1992.