

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Form 1

Award No. 12801
Docket No. 12442
94-2-91-2-285

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

PARTIES TO DISPUTE: (International Association of Machinists
 (and Aerospace Workers
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 (Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"1. That the Kansas City Southern Railway Company violated Rule 2(a) and Rule 8(a) of the Current Controlling Agreement between the International Association of Machinists and the Kansas City Southern Railway, when it harshly and unjustly refused to pay Machinist Andrew Hall, Jr. for four (4) hours pay at the basic straight time rate account being denied the right to complete his regular assigned shift on November 24, 1990.

That the Kansas City Southern Railway Company make Machinist Hall whole for the four hours of straight time pay he was denied on November 24, 1990, after working an overtime shift on November 23, 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 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 waived right of appearance at hearing thereon.

The Claimant was working his regular job assignment from 8:00 a.m. to 4:00 p.m., but was notified by his foreman that he would be sent home at noon due to the "hours of service law", since the Claimant had performed certain overtime work previously.

The Organization cites Rule 2(a), which refers to five eight-hour days with two consecutive days off as the basic schedule.

Rule 8(a) of the Agreement advises that when it becomes necessary for employees to work overtime, they shall not be laid off during working hours to equalize the time.

The Carrier argues that the Claimant worked from midnight to 8:00 a.m. on an overtime basis, and then moved into his regular assignment at 8:00 a.m. But, because the Claimant performed the work of "moving locomotives", he became subject to the "hours of service act" and, because he was a "covered" employee, he was not permitted to work more than four hours of his regular position.

There is disagreement between the parties as to whether or not the employee was, in fact, covered by the Hours of Service Act, based on the work he performed on the overtime shift.

It is not incumbent upon this Board to interpret the Hours of Service Act and, thus, we refuse the invitation to do so.

But, regardless of a potential violation of the Act, the Carrier is responsible not only to comply with federal statutes, but also to abide by the terms of its Agreement.

The Carrier designates the work that is performed by the employee while engaged in overtime, as well as on regular shifts.

Under the circumstances, we feel that the claim is well-stated and should be sustained.

A W A R D

Claim sustained.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmarked date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois this 26th day of January, 1995.