

Award No. 369
Docket No. 364
2-D&RGW-CM-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Rule 4, paragraph (g), was violated and that Harry Ashley should be paid double time after 16 hours of service when called at Grand Junction, Colorado, to go to Delta, Colorado, March 7, 1938.

EMPLOYEES' STATEMENT OF FACTS: Harry Ashley was working on a regular seven day shift in the yard; he worked his shift March 6, from 3:30 P. M. to 11:30 P. M., eight hours. He was called March 7 at 5:00 A. M. to leave at 6:00 A. M.; he got one hour preparatory time according to Rule 9, paragraph (d).

He left Grand Junction at 6:10 A. M.; arrived in Delta at 8:00 A. M., and received two hours' pay according to Rule 9, paragraph (a). This made his eleven hours of service.

He started to work at Delta at 8:00 A. M., his time and one-half beginning at that time. At 1:00 P. M., March 7, he had completed sixteen hours of service in twenty-four hours and should have received double time until 3:30 P. M., the starting time of his regular shift.

Rule 9, paragraph (d), reads:

"If required to leave home station during overtime hours, they will be allowed one hour preparatory time at straight time rates."

Rule 9, paragraph (a), reads:

"An employe regularly assigned to work at a shop, enginehouse, repair track, or inspection point, when called for emergency road work away from such shop, enginehouse, repair track, or inspection point, will be paid from the time ordered to leave home station until his return, for all time actually working, in accordance with the practice at home station, and straight time rate for all time waiting or traveling."

Harry Ashley was paid according to Rule 9.

of employe's regular shift shall be paid for at the rate of double time except in cases of service for which rules provide other time allowances. Mr. Ashley did not actually work from 11:30 P. M., March 6, to 5:00 A. M., March 7, and from 6:10 A. M. to 8:00 A. M. on March 7.

For the information of the Board, the carrier wishes to state when the initial agreement with System Federation No. 10, effective September 1, 1934, was negotiated, a printed booklet (copy of which is submitted herewith) was issued to all concerned covering the application and proper interpretation of rules of the agreement and in connection with the application and interpretation of Rule 4 (g), the pamphlet shows the following:

"Except for rearrangement of the wording, this rule is identical in wording and application with the old rule—it provides payment of double time only after 16 hours' actual service—service in this case means work, not waiting, sleeping or traveling."

While the printed booklet covering the application and proper interpretation of rules of the agreement above mentioned does not bear the signature of any of the Federated Shop Craft committee, nevertheless, they agreed to and were in harmony with the interpretations as issued. The president of the system committee accompanied Assistant General Manager Ray of the carrier to meetings at the various shop terminals on the railroad, at which the officers of the railroad and local shop committees were present and were furnished copies of the printed booklet, and no exception was then taken to the recognized and established application of Rule 4 (g), nor has exception since been taken prior to this case arising. When the agreement was revised, effective November 1, 1935, effort was made by the committee to get the carrier to agree to the so-called standard rule, which request, however, was denied. It will be noted that the interpretation placed on Rule 4 (g) of the carrier and agreed to verbally by the committee provides for payment of double time only after sixteen hours' actual service, service meaning work, not waiting, sleeping or traveling.

The carrier contends there is nothing in Rule 4 (g), or the past application thereof which would entitle Mr. Ashley to double time after 1:00 P. M. on March 7, and further contends that Mr. Ashley's sixteen-hour period of service interpreted as meaning actual work under this rule did not terminate until 4:00 P. M. of March 7, and he did not, therefore, accrue any double time. Furthermore, under a literal application of the rule, he could not have accrued any double time for the reason that with double time starting at 4:00 P. M., March 7, there are thirty minutes beyond the end of the twenty-four hour period starting from 3:30 P. M. of the 6th, his regular starting time.

Mr. Ashley was used in accordance with and compensated under the provisions of Rule 9 of the agreement in the same manner as mechanics have previously been used and paid, not only since September 1, 1934, but also throughout the period from 1922 to 1934.

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.

The parties to said dispute were given due notice of hearing thereon.

Rule 4, paragraph (g), reads as follows:

"All time actually worked beyond sixteen hours of service in any twenty-four hour period, computed from starting time of employee's

regular shift, shall be paid for at the rate of double time, except in classes of service for which rules provide other time allowance."

The rule is clear. For all time actually worked past sixteen hours of service, employees shall be paid double time.

The employe Harry Ashley worked past sixteen hours of service. The term "service" does not require that the employe actually works for sixteen consecutive hours. The term "service" clearly includes traveling time and necessary waiting time.

It is obvious that an employe is in service while traveling or waiting.

There is no requirement in this rule that an employe actually work before he can be classified as being "in service."

AWARD

Claim sustained.

The actual work performed after sixteen hours of service computed from the starting time of Harry Ashley's regular shift shall be compensated for at the rate of double time under the provisions of Rule 4, paragraph (g), and also Rule 9 (a).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1939.