

**Award No. 751**

**Docket No. 666**

**2-D&RGW-CM-'42**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell 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**

**DISPUTE: CLAIM OF EMPLOYEES:** That Carmen A. E. Tyler and Frank Gloven, employed at Tennessee Pass, Colorado, are being worked in violation of Rule 13 of the current agreement and that such employes shall be paid two hours pay, at time and one-half rate, for each day so worked, after February 27, 1941.

**EMPLOYEES' STATEMENT OF FACTS:** For several years prior to November 15, 1940, the carmen employed at Tennessee Pass, Colorado, have been assigned to a definite twelve hour tour of duty and subject to call the other twelve hours, and paid the monthly rate of \$209.33 for all services rendered. An excess of \$32.16 per month above the minimum allowed under the provisions of Rule 13 of the former agreement. At present, Frank Gloven is working the 6 A. M. to 6 P. M. shift and A. E. Tyler is working the 6 P. M. to 6 A. M. shift. The lunch period is not regular, as the employes take time out for lunch whenever the opportunity presents itself.

On November 16, 1940, or shortly thereafter, the salary for these positions were reduced to \$187.36 per month (the absolute minimum allowed under Rule 12 of the agreement effective September 1, 1940) retroactive to September 16, 1940.

A check of the work performed at this point was then made by the organization which definitely showed that the work at this point is NOT very irregular within the meaning of Rule 12 of the current agreement, but did show that the work is intermittent (not continuous), and on February 27, 1941, the carrier was requested to assign these employes to conform to the provisions of Rule 13 of the current agreement.

On April 5, 1941, this request was denied by the carrier, claiming that the proper application of old Rule 13, (present Rule 12) had been agreed upon by the organization and the management.

**POSITION OF EMPLOYEES:** There are quite a number of outside points on the System that have been worked on a monthly salary for several years. Some points were receiving the absolute minimum allowed (\$177.17) per month, as provided by former Rule 13 of old agreement. While other points were receiving an excess monthly rate, adjusted to reasonably compensate the employes for excessive hours worked and subnormal working conditions at the respective points.

question of doubt that a year ago the organization conceded that the provisions of Rule 12 were applicable at Tennessee Pass. If a year ago it was the opinion of the organization that Rule 12 was applicable at Tennessee Pass, it certainly is now for the reason there has been no change in the conditions at that point.

The carrier contends, in view of the facts herein set forth, that it is violating no rule of the agreement in applying the provisions of Rule 12 to the carmen employed at Tennessee Pass, and further contends in view of these facts the claim should be denied.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record of 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.

The facts in this case are very much in dispute and the case is remanded to the parties with direction to make a joint check to ascertain, first, whether at this point the work is very irregular or not; and second, the actual amount of work performed by these men. The right is reserved to the parties if they desire to resubmit this case to this Board. Nothing herein is to be considered as passing on the question of the rate of pay.

#### AWARD

Claim remanded with instructions to make the joint check as set out in the findings and with the privilege to resubmit the case if desired.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 20th day of April, 1942.