

Award No. 753  
Docket No. 698  
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 EMPLOYES'  
DEPARTMENT, A. F. OF L. (CARMEN)**

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

**DISPUTE: CLAIM OF EMPLOYEES:** That at Thistle, Utah, on June 1, 1941, the carrier did and is violating the current agreement and Section 6 of the Railway Labor Act, as amended, by changing the hours of work and the working conditions of Carmen W. K. Johnson, C. L. Johnson, H. G. Schelledy and Ralph Gren, from a basis of eight (8) hours to a basis of twelve (12) hour day.

That Carmen W. K. Johnson, C. L. Johnson, H. G. Schelledy and Ralph Gren, be each allowed four (4) hours at the rate of time and one-half for each and every twelve (12) hour day worked retroactive to June 1, 1941.

**EMPLOYEES' STATEMENT OF FACTS:** For several years prior to June 1, 1941, the carrier maintained three carmen at Thistle, Utah, assigned to the service as follows:

		After Sept. 1, 1940	Prior to Sept. 1, 1940
W. K. Johnson	7:00 A.M. to 3:00 P.M. shift	\$187.36	\$177.17
C. L. Johnson	3:00 P.M. to 11:00 P.M. "	\$187.36	\$177.17
H. G. Schelledy	11:00 P.M. to 7:00 A.M. "	\$187.36	\$177.17

These said employes were paid on a monthly salary as shown above, and were required to protect the service for four (4) hours in advance of and continuous with their regular assigned shift, and if called or ordered into service outside of their stipulated eight-hour shifts, no overtime pay was allowed for such called out or ordered in service.

On May 28, 1941, the carrier advised the organization that effective June 1, 1941, one additional man would be put on at this point and two men assigned to a spread of twelve hours from 7:00 A. M. to 7:00 P. M. and two men assigned to a spread of twelve hours from 7:00 P. M. to 7:00 A. M.

The carrier was requested verbally on May 29, 1941, not to change the hours of service, and on June 10, a letter was written to the carrier by the general chairman requesting that these employes be re-assigned to an eight hour shift and paid four hours each day at time and one-half rate for each day worked on the twelve hour shift.

The Carrier submits that in view of all the facts and circumstances in the instant case, the claim 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 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.

At Thistle, Utah, the positions now held by the claimants have been on a monthly basis for better than ten years. That under Rule 12 of the current agreement it specifically provides that no overtime will be allowed for time worked in excess of eight hours per day and it also provides that no time is to be deducted unless the employes lay off on their own accord. It is further provided in the agreement that if the rule does not produce adequate compensation for certain of these positions by reason of the occupants being required to work excessive hours, the salary for these positions may be taken up for adjustment and under this rule, claimants in this case, if they are working excessive hours, have a right to take up for adjustment the question of the compensation they have been receiving. This is the procedure they should have followed instead of filing claim now before this Board.

#### AWARD

Claim denied without passing on the claimed 12-hour assignment.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

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