

Award No. 1130

Docket No. 1052

2-B&M-EW-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

BOSTON & MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES. That when the bulletined hours are nine hours per day with time and one-half for the ninth hour, the carrier is subject to paying the minimum of one hour for service continuous with the ninth hour up to forty (40) minutes or less, under the controlling agreements.

EMPLOYES' STATEMENT OF FACTS: During November and December, 1943, the regular bulletined hours for the electrical department employes were from 8 A. M. to 5 P. M. six days a week.

For any time worked up to forty minutes or less continuous with the ninth hour, the carrier paid time and one-half therefor on the minute basis, i.e., for service required from 5 P. M. to 5:20 P. M. thirty minutes were allowed, or from 5 P. M. to 5:30 P. M., forty-five minutes were allowed. Whereas the employes contended that a minimum of one hour at the time and one-half rate should have been allowed for such twenty or thirty minute service.

The agreements controlling are—

- (a) Printed, dated effective April 1, 1937.
- (b) Memorandum, effective April 24, 1943.
- (c) Memorandum, effective November 16, 1943.

POSITION OF EMPLOYES: During the month of November, 1943, negotiations were conducted for the express purpose of lengthening the regular work day of the employes in the engineering department coming within the scope of the agreement between the carrier and System Federation No. 18.

These informal discussions culminated in the signing of a memorandum of agreement which was dated November 16, 1943. The object of this memorandum was to assist the carrier, during the period of manpower shortage in performing necessary work by placing all of the employes of the groups affected on a regular nine-hour day, and, if necessary, on a ten-hour day.

In the majority opinion of the Supreme Court of the United States in the case of *Elgin, Joliet & Eastern Railroad vs. Burley*, decided June 11, 1945, the Court laid down the rule that a grievance committee or an organization cannot properly represent any individual or group of individuals in the prosecution of a claim without proof of specific authorization to do so and that the Board of Adjustment cannot render a decision binding on the individuals unless it affirmatively appears that such individuals have specifically authorized the organization to represent them.

A claim such as the one presented in this case cannot be supported by any specific authorization because no specific instances are mentioned. Therefore, the carrier urges that the Board is without authority to render an award in this case, because

First, no proper claim has been presented, and

Second, it does not appear that the committee has been authorized to represent any individuals.

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 waived right of appearance at hearing thereon.

The right of this Board on the petition of the representatives of employes to interpret an agreement between employes and a carrier, even though no particular individuals are before the Board as parties, has long been recognized as one of the important functions of the Board.

When, under the terms of the Memorandum of Agreement of November 16, 1943, the bulletined hours of the employes here involved were increased from eight to nine, nothing was said as to the rate of pay for the ninth hour. If the Memorandum were read literally the ninth hour, being one of the regular bulletined hours, would be paid for on straight time and overtime pay would not start until the tenth hour. But such clearly was not the intent of the parties and the carrier continued to pay time and a half for the ninth hour. We must assume, in the light of the parties own interpretation with respect to pay for the ninth hour, that the increase of the bulletined hours beyond eight was not intended to affect the pay provided by the agreement of April 1, 1937, for hours worked beyond eight. To hold otherwise would be to write an entirely new agreement and that is beyond our power to do.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of March, 1946.