

Award No. 1671

Docket No. 1563

2-Pull-CM-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement Carman C. R. Miller was improperly compensated for the services which he rendered on November 4th and 5th, 1951.

(2) That accordingly the Carrier be ordered to additionally compensate the aforesaid employe the difference between the compensation he was paid for the hours of 5:10 A. M. to 4:30 P. M., November 5, 1951 at the appropriate overtime rates.

EMPLOYEES' STATEMENT OF FACTS: Carman C. R. Miller, hereinafter referred to as the claimant, is regularly assigned to the 8:00 A. M. to 4:30 P. M. shift at Louisville, Kentucky. On November 4, 1951, the claimant was instructed by his foreman to arrange after the completion of his regular tour of duty, to ride Illinois Central Train No. 103 to Princeton, Kentucky, to service a troop train. The claimant, as instructed, rode Illinois Central Train No. 103 departing from Louisville on November 4, 1951 at 9:10 P. M. arriving at Princeton at 1:50 A. M., November 5, 1951. After his arrival at Princeton the claimant immediately went to work servicing the troop train, completing his work at 6:00 A. M. Upon completion of the work at Princeton, the claimant rode Illinois Central Train No. 102 back to Louisville, arriving there at 1:15 P. M. November 5, 1951, after which he resumed his regular duties completing same at 4:30 P. M., November 5, 1951.

Carrier compensated the claimant as follows:

8:00 A. M. to 4:30 P. M. November 4—8 hours at straight time.

9:10 P. M. to 8:00 A. M. November 4 and 5—time and one-half.

8:00 A. M. to 4:30 P. M. November 5—straight time.

The agreement effective June 16, 1951, as subsequently amended, is controlling.

ing him from service. If, for example, Miller had been held on continuous duty and had not been released from service during the period 4:30 P.M., November 4, to 9:10 P.M., November 4, for which time Miller received no compensation and for which time the organization makes no claim for compensation, the provisions of Rule 8 could logically be applied in the matter of determining whether or not double time payment was due the employee. In the instant case, there is no logic to the organization's claim that double time is due Miller for work performed on the dates in question.

At this point the company wishes to state that there is in effect on Pullman property an agreement between The Pullman Company and its electrical workers, represented by the International Brotherhood of Electrical Workers, System Council No. 24, effective July 1, 1948, which contains a rule identical to **Rule 8. Double Time After 16 Hours** in the carmen's agreement. The rule appears in the electrical workers' agreement as Rule 34 and bears the same title, **Double Time After 16 Hours**. In determining whether an employee under the electrical workers' agreement is entitled to be paid at the double time rate, the company has in all similar instances computed the employee's time as it has in the instant case, and the organization has at no time protested such method of computation. In view of the fact that the method employed by the Company is in full accordance with the rules of the agreement and with Pullman practice, management is at a loss to understand upon what basis the organization is alleging that Carman Miller was not properly compensated on the dates in question.

CONCLUSION

The company has shown that Miller was properly compensated for work performed on November 4-5, 1951, in accordance with the provisions of Rules 1, 5, and 15 and with past practice on Pullman property. The provisions of Rule 8, upon which rule the organization apparently bases its case, are not applicable to this dispute. The claim is without merit and should be denied.

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

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

Claimant is regularly assigned as a carman at Louisville, Kentucky. His assigned hours were 8:00 A.M. to 4:30 P.M. On November 4, 1951, claimant was called for service at 9:10 P.M. and completed such service at 1:15 P.M. on November 5, 1951. He immediately resumed his duties on his regular assignment which ended at 4:30 P.M. Carrier compensated claimant at straight time for 8 hours work, 8:00 A.M. to 4:30 P.M., on November 4. He was paid time and one-half from 9:10 P.M. on November 4 to 8:00 A.M. November 5. He was paid straight time, 8:00 A.M. to 4:30 P.M. on November 5. Claimant contends that this is not in accord with the controlling rules, which provide:

"(a) All service performed outside of bulletin hours will be paid for at the rate of time and one-half until relieved, except as may be provided in the rules hereinafter set out." Rule 5(a) current agreement.

"All service performed beyond 16 hours, computed from the starting time of the employee's regular shift, shall be paid for at the rate of double time.

If an employe renders service beyond 24 hours, computed from the starting time of his regular shift, double time payment shall be continued, unless the employe is released at his own request." Rule 8, current agreement.

Under the literal meaning of the foregoing rules, without outside aids in determining their import, claimant would be entitled to eight hours pay for his work performed from 8:00 A.M. to 4:30 P.M. on November 4, at the straight time rate. He would be entitled to pay at time and one-half rate from 9:10 P.M. on November 4 to 12:00 Midnight following. He would be entitled to double time from 12:00 Midnight to 8:00 A.M. on November 5 under the first paragraph of Rule 8. He would be entitled to double time from 8:00 A.M. to 4:30 P.M. on November 5, under the second paragraph of Rule 8. It is contended by the carrier that the rule has been mutually interpreted as meaning that double time would be paid after sixteen hours of continuous service. The organization has submitted the claim on the theory that double time would be paid after sixteen hours of service, intermittent or continuous, beginning with the starting time of the assignment.

The claim as made on the property by the local chairman is for time and one-half from 9:10 P.M. on November 4, 1951 to 5:10 A.M. on November 5, 1951, and double time from 5:10 A.M. to 4:30 P.M., on November 5, 1951. The general chairman contended for this same interpretation of the rule in his letter to the superintendent of yards of the carrier, under date of January 24, 1952. The organization also offered a letter in evidence written by the general chairman of Brotherhood of Electrical Workers construing a similar rule in the same manner as the general chairman of the Brotherhood of Railway Carmen. The claim as made is consistent with the interpretations contended for by these representatives of their respective organizations.

It is clearly demonstrated that the organization has presented the claim on the basis that double time was payable after sixteen hours of service, intermittent or otherwise, from the beginning of the regular assignment. For the purposes of this claim we accept the meaning placed upon the rule by the organization and sustain the claim as made.

Under this construction of the rule, the contention of the carrier that double time is not owing until after sixteen hours of continuous service from the beginning of the regular assignment, has no merit. There is no evidence of any mutual interpretation to this effect. The rule is not ambiguous or indefinite on this point. It clearly states that "all service performed beyond sixteen hours, computed from the starting time of the employe's regular shift, shall be paid for at the rate of double time." The rule brings all service performed, not continuous service only, within its purview. The sixteen-hour provision, as construed by the organization, relates to intermittent as well as continuous service. We accept this construction, under the circumstances here shown, rather than the literal meaning of the rule. An affirmative award is required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of May, 1953.