

Award No. 2036
Docket No. 1842
2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That at the Atlanta Pullman Shops on November 26, 1953, The Pullman Company violated controlling agreement when one of their representatives failed to properly distribute overtime in the Electrical Department.

2. That Electricians W. E. Cole and J. C. Swift be compensated for the time that Electricians C. D. Settles and J. G. Hayes were assigned to work overtime on November 26, 1953, at the time and one half rate.

EMPLOYEES' STATEMENT OF FACTS: At the Atlanta Pullman Shops on November 26, 1953, it was necessary to work two (2) electricians on overtime to reassemble an A. C. motor. Shop Foreman Redden knew that the overtime was being handled from an overtime board but, for some reason, did not want the next two electricians who were next out for overtime on the job.

Electricians J. G. Hayes and C. D. Settles reassembled the A. C. motor and generator, which took them from 7:30 A. M. until 11:00 P. M.

The agreement effective July 1, 1948, as subsequently amended is controlling.

POSITION OF EMPLOYEES: That the Pullman Company violated the rules of the controlling agreement when one of their representatives failed to properly distribute overtime under Rule No. 36 and the memorandum of understanding signed by The Pullman Company and System Council No. 24; Rule No. 36 reading in part:

"Distribution of Overtime. All time worked outside of bulletined hours shall be distributed as equally as possible between the employes involved."

The foregoing portion of Rule 36 clearly states that all time worked outside of bulletined hours shall be equally distributed.

have begun a job during their regular bulletined hours shall not be permitted to perform the overtime work incident to the completion of the job is contained in company files. Under date of June 23, 1952, the organization filed a claim in behalf of two unidentified Philadelphia electricians who were not assigned to certain overtime work on June 14, 1952. The organization alleged violation of Rule 36 in that the company did not assign the electricians next in line for overtime and requested that these unidentified electricians be paid 3:00 hours overtime at time and one-half. In denying the claim General Foreman B. C. Donnelly pointed out that Electricians P. W. Wischman and T. A. Stasney had been assigned during their regular tour of duty to perform the work and that Rule 36 did not contemplate that employes who had begun a job and were thoroughly familiar with the work should be removed from the job at the close of their tour of duty and employes not familiar with the work assigned. Apparently the organization considered management's position was correct since Foreman Donnelly's decision was never appealed.

On August 20, 1953, Electrician W. Tomlinson, Miami, filed a claim in his own behalf in which he alleged that the company violated Rule 36 of the agreement on August 18, 1953, in that an electrician who stood below him on the overtime board was worked overtime. In his letter of decision dated September 4, 1953, Foreman W. T. Meeks called attention to the fact that the electricians who had performed the work had begun the job during their regular tour of duty and that Rule 36 did not contemplate that overtime would be equalized on a strict day to day basis or that employes familiar with the job would be removed therefrom and employes not conversant with the work assigned. Foreman Meek also stated that while the employes who performed the overtime (Dumas and Freeman) would obtain overtime on this particular job, other electricians would soon accrue as much overtime on other assignments. Foreman Meeks' decision was never appealed. Neither was a similar decision on a claim filed by Electrician F. X. Kumalae, Miami, August 20, 1953, in his own behalf appeal. (The above-described cases are available for inspection upon request.) Finally, the company wishes to call attention to a fact which is pertinent to the instant case; namely, that on November 28, 1953, Electrician Cole performed 8:00 hours' overtime, a condition which establishes that it is management's practice to distribute overtime "as equally as possible" in accordance with the meaning and intent of Rule 36.

The company submits that the organization's interpretation of Rule 36 is improper and would render the language of the rule providing that overtime shall be distributed "as equally as possible" inoperative and without meaning.

Finally, even if the work properly should not have been performed by Electricians Settle and Hayes, the company does not agree with the organization's contention that it is required to pay Electricians Cole and Swift at the rate of time and one-half. Numerous awards of the Second Division, National Railroad Adjustment Board, hold that the proper rate for work not performed is at the straight time rate. (See Awards 1269, 1530, 1601, 1622, 1625, and 1705.)

CONCLUSION

In this ex parte submission the company has shown that the organization improperly has interpreted the provisions of **Rule 36. Distribution of Overtime.** Also, the company has shown that the rule does not contemplate that employes who have begun a job and are familiar with the work involved shall be removed before the work is completed and that employes not familiar with the work shall be assigned.

The claim in behalf of Electricians Cole and Swift is without merit and 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.

This case is controlled by our Award No. 2035 (Docket No. 1841).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.