

Award No. 2474
Docket No. 2300
2-CRI&P-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That monthly rated Electricians who are assigned under Rule 14 on monthly basis are subject to be paid the differential rate provided for in Rule 105 of the current agreement when making tests and inspections each month, and are required to swear to Federal Reports covering such inspections of Electricians' work.

2. That accordingly the Carrier be ordered to properly compensate Electrician R. E. Smart by paying him the six (6) cents differential rate provided for in Rule 105 for making tests and inspections and swearing to Federal Reports on Diesel Engines on the dates listed below:

| | | | | | |
|----------|-----|----------------|----------|-----|----------------|
| February | 23, | 1955- 8 hours | February | 25, | 1955-12 hours |
| March | 6, | 1955-12 hours | March | 7, | 1955-11 hours |
| March | 8, | 1955-12 hours | March | 14, | 1955- 8 hours |
| March | 23, | 1955-15 hours | March | 25, | 1955- 8 hours |
| April | 6, | 1955- 8 hours | April | 7, | 1955-13½ hours |
| April | 9, | 1955-18½ hours | April | 10, | 1955-21¼ hours |

This being a total of 147¼ hours at .06 cents equals 8.83.

EMPLOYEES' STATEMENT OF FACTS: The carrier has assigned a number of electricians under "Rule 14—Assigned Road Work Monthly Basis" who are paid a monthly rate. Claim has been made for the six (6) cents differential as provided for in Rule 105, which reads as follows:

"Rule 105. Differential. (a) At points where there are ordinarily 15 or more engines tested and inspected each month, and electricians are required to swear to Federal reports covering such inspections of electricians' work, an electrician will be assigned to handle this work in connection with other electricians' work and

Article 1 (a) reads:

'HOURLY RATES OF PAY. All employes herein specified shall be paid on the hourly basis, except positions designated by an asterisk (*) will be paid monthly rate as full compensation for all services rendered.'

The other rules relied upon by the Claimants deal with overtime starting time, etc.

The effect of the claimants' contention is that because they are required to perform telegraphers' work they are removed from the exceptions contained in Article 1 (a). To this we do not agree. Article 1 (a) provides that positions designated by an asterisk (*) will be paid monthly rate 'as full compensation for all services rendered.' It does not say the occupants of these positions will perform only certain work, or work only certain hours.

The mere fact that in the list of stations that all asterisked positions were listed as agents in no wise affects this plain language of Article 1 (a). These claimants are still paid a monthly salary and are not entitled to overtime pay."

Similarly, in the instant case, inasmuch as Claimant Smart's monthly rate comprehends any and all service performed during the month, no claim can be made for differentials, supplements, or any additional payments for such service which he may perform.

The language contained in Rule 14 to the effect that monthly rated employes assigned under the provisions of Rule 14 may perform any work pertaining to their class or craft is definite. It does not read as the employes would like to have it read in the prosecution of this claim. To Uphold the employes' contention in this case, it would be necessary to rewrite that part of Rule 14 to read: "... except when testing engines, he shall be paid an additional 6¢ per hour." Obviously, the present rule does not read thus. Because it does not, there is no basis existing in the applicable agreement which would make it necessary for the carrier to pay Mr. Smart the 6¢ differential.

For the above reasons, the claim has been declined on the property and we respectfully request your Board to uphold the carrier's position, based upon the existing agreement.

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 this dispute were given due notice of hearing thereon.

Rule 105, provides as follows:

"(a) At points where there are ordinarily 15 or more engines tested and inspected each month, and electricians are required to swear to Federal reports covering such inspections of electricians' work, an electrician will be assigned to handle this work in connection with other electricians' work and will be allowed six (6) cents per hour above the electricians' minimum rate at the point employed.

At points or on shifts where no inspector is assigned and electricians are required to inspect engines and swear to Federal reports covering such inspection of electricians' work, they will be paid six (6) cents per hour above the electricians' minimum rate at the point employed for the days on which such inspections are made.

(b) Battery room helpers regularly performing battery work will be paid six (6) cents per hour above the rate paid electrician helpers."

Rule 14, provides in part:

"The monthly rates payable to such employes effective September 1, 1949 shall be the rates in effect August 31, 1949 reduced by \$2.43 per month.

Employes regularly assigned to perform road work and paid on a monthly basis, shall be paid not less than the hourly rate established for the corresponding class of employes coming under the provisions of this schedule on the basis of 313 eight-hour days per calendar year. The monthly salary is arrived at by dividing the total earnings of 2504 hours by 12. No overtime is to allowed for time worked in excess of eight (8) hours per day, except on employe's regular assigned rest day; on the other hand, no time is to be deducted unless the employe lays off on his own accord. Each monthly rated employe will be assigned one (1) regular rest day in seven, Sunday if possible. * * *."

There is little or no dispute as to the facts in this case. The claimant did the work for which he requests additional compensation. The carrier asserts that under Rule 14 the claimant is not entitled to the six cents (6¢) differential for the work performed. The organization argues that under Rule 105 he is entitled to the six cents (6¢) differential. It will be observed that Rule 14 provides for a minimum by stating that employes "shall be paid not less than" the rate established. It does not prohibit paying a greater amount where the same may be provided for. Rule 105 provides for paying a six cents (6¢) per hour differential under certain circumstances and conditions spelled out in the rule. The claimant performed the work under these circumstances and conditions.

AWARD

The employes' claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1957.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

(The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the interpretation was rendered.)

INTERPRETATION NO. 1 TO AWARD NO. 2474

DOCKET NO. 2300

NAME OF ORGANIZATION: System Federation No. 6, Railway Employees' Department, AFL-CIO (Electrical Workers).

NAME OF CARRIER: Chicago, Rock Island and Pacific Railroad Company.

QUESTION FOR INTERPRETATION: Do the words in Award No. 2474: "The employees' claim is sustained." require the Carrier to additionally compensate Electrician R. E. Smart for a total of 147¼ hours at .06 cents per hour, which equals \$8.83 and which was set forth in Part 2 of the Employees' claim?

Upon application of the representatives of the Organization involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application as provided for in Section 3, First (m) of the Railway Labor Act, as amended, the following interpretation is made:

This matter came before us because the carrier paid claimant the six cents (6¢) per hour differential rate for eight (8) hours for each of the twelve (12) days specified in the claim or a total of ninety-six (96) hours, the gross amount received by claimant being \$5.76. The organization asserts that the payment should have included the fifty-one and one-quarter (51¼) hours of overtime worked at six cents (6¢) per hour for a gross total of \$8.83. The Award does not mention either straight-time hours or overtime hours.

The issue of whether the 6¢ differential rate applied to overtime hours was not discussed in the briefs. The claimant herein is on a monthly salary and receives no payment for overtime hours. The issue of overtime hours not having been discussed and no reason advanced why that work should have been treated differently, the Award should be construed to apply to straight time hours only. The answer to the question submitted for interpretation is "NO."

Referee Carl R. Schedler, who sat with the Division as a member when Award No. 2474 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February, 1958.