

Award No. 2913

Docket No. 2613

2-PRR-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Kiernan when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Machinists A. R. Meredith and John Sheehan (Relief) Ebenezer Enginehouse, Buffalo, New York, were improperly assigned to bulletined hours, from 5:00 A.M. to 1:00 P.M.

2. That accordingly, the Carrier be ordered to additionally compensate Machinists A. B. Meredith and John Sheehan, three hours at the overtime machinists' rate of pay from 5:00 A.M. to 8:00 A.M., for every day they are required to work on these improper assignments.

3. That accordingly the Carrier also be ordered to additionally compensate Machinists A. R. Meredith and John Sheehan, three hours at the straight time machinists' rate of pay, because the Carrier would not permit them to complete the hours of their proper assignments. This claim also to be, for every day they are required to work on these improper assignments.

EMPLOYEES' STATEMENT OF FACTS: Machinists A. R. Meredith and John Sheehan, hereinafter referred to as the claimants, are employes by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the carrier's Ebenezer Enginehouse, New York.

Claimant A. R. Meredith works the machinist position on the fuel truck, Monday through Friday, bulletined hours from 5:00 A.M. to 1:00 P.M., with Saturday and Sunday rest days.

Claimant John Sheehan works Saturday through Wednesday, with Thursday and Friday rest days. On Saturday, Claimant Sheehan relieves the fuel

circumstances, even if it could be shown that the fourth paragraph of Rule 5-B-1 was not applicable to the facts herein. That being so, the most time that claimants could claim under any circumstances would be for two hours from 5:00 A.M. to 7:00 A.M. from August 12, to October 31, 1955 and for one hour from 6:00 A.M. to 7:00 from October 31, 1955 to December 26, 1956.

With respect to Item No. 3 of the employees' claim the carrier submits that there is no specific rule of the contractual agreement which would support a request for this type of a compensation claim, consequently, it should be denied in its entirety. Moreover, even if it were to be found that the agreement could be interpreted to support such a ridiculous claim the same factual situation applies as was set forth hereinabove, hence the only time which the claimants can properly claim would be for two hours i.e., from 1:00 P.M. to 3:00 P.M., from August 12, 1955 to October 31, 1955, and for one (1) hour i.e., from 2:00 P.M. to 3:00 P.M. from October 31, 1955 to December 26, 1956.

The carrier submits, therefore, that even assuming a violation of the applicable agreement in the instant case, which the carrier strenuously denies, the claimants would only be entitled to the compensation as set forth immediately above.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act, to give effect to the said agreement, which constitutes the applicable agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that there has been no violation of the applicable agreement, and that the claimants are not entitled to the compensation which they claim.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the employees in this matter.

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

Claimants herein contend that they were improperly assigned. The assigned hours was from 5:00 A.M. to 1:00 P.M., Monday through Saturday. A relief man was assigned for Saturday. The work included servicing, inspecting and making minor repairs to yard diesel engines at various points in the Buffalo Switching District. A fuel truck is used and it is operated by a chauffeur under another working agreement.

The work is that which is ordinarily performed at the roundhouse, and/or fueling station. There are three shifts employed at the enginehouse, namely—8:00 to 4:00, 4:00 to 12:00, and 12:00 to 8:00. Lunch time being included in the eight hour period. Claimants also had lunch time included within their eight hours work. Claimants are under the jurisdiction of the Enginehouse Foreman, and on that seniority roster. Rule 5-D-1 in part reads:

“When bulletined hours for all forces are eight (8) hours per day, and the second shift follows immediately after the first shift, it shall be the policy to make the starting time and quitting time for all employees on each shift the same.”

Exceptions to this rule will be necessary when the normal starting times are varied from as indicated in Rules 5-B-1 and 5-C-1 (Rule 5-D-2). Rule 5-C-1 reads:

“When requirements of the service necessitate, lapped shifts varying from Rule 5-B-1 may be established but will not be resorted to when other equally economical arrangements can be made.”

The claimants herein report for work at the Enginehouse and quit work at the same point. They work a straight eight hour shift, with lunch period allowed. They perform the same kind of work as others of the same class or craft in or at the enginehouse. They are part of a three-shift operation of eight hours each. We cannot hold that this is such an assignment as would come within the exceptions as referred to in Rule 5-D-2. An employee on an assignment such as we have here, qualifies for the overtime rate for the hours assigned before 8:00 A.M. He would also qualify for eight hours after his regular starting time, that is 8:00 A.M.

The record is not sufficiently clear to establish the amount of the monetary claim due the claimants, and that question is remanded to the parties for further consideration, in accordance with the rules and this finding herein.

AWARD

Sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1958.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 2913

The majority find that the operation of the fuel truck was part of the three-trick operation at the Ebenezer Enginehouse, and refuses to permit an exception to the general starting time rules. This finding, (which is apparently based on the facts that the fuel truck was subject to the jurisdiction of the enginehouse foreman, and that machinists assigned to it reported at the enginehouse) is contrary to other facts of record, which show that the operation of the fuel truck and the performance of work by employes assigned to it took place outside at various yards and independently of any operations being carried on in the enginehouse. Fueling of engines took place only on one trick and under operating requirements which justified a departure from normal one-trick starting times. The arrangements for claimants' lunch periods are not relevant to the question of whether their assignment was a one-shift or part of a three-shift operation. The award integrating this assignment with the three-trick enginehouse operation is in error.

/s/ J. A. Anderson

/s/ E. H. Fitcher

/s/ D. H. Hicks

/s/ R. P. Johnson

/s/ M. E. Somerlott