

Award No. 2927
Docket No. 2758
2-ATSF-CM-'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. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY SYSTEM**

DISPUTE: CLAIM OF EMPLOYES:

1—That under the current agreement Carman O. W. Lemon was unjustly deprived of his contractual rights to work on July 14, 1956 at Lubbock, Texas.

2—That accordingly the Carrier be ordered to additionally compensate this employe (8) hours at his applicable time and one-half rate of pay for July 14, 1956.

EMPLOYES' STATEMENT OF FACTS: O. W. Lemon, hereinafter referred to as the claimant, is regularly employed as a carman by The Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, at Lubbock, Texas. The claimant is bulletined and assigned the working hours of 7:00 A.M. to 4:00 P.M., work week of Monday through Friday, with rest days of Saturday and Sunday.

On Saturday, July 14, 1956, Carman Townsend, working in the Lubbock trainyards from 7:00 A.M. to 4:00 P.M., work week of Friday through Tuesday, rest days of Wednesday and Thursday, laid off his regular assignment and it was necessary to fill his position. The carrier used Carman Hobbs, who had been working a 3:00 P.M. to 11:00 P.M. shift, work week of Sunday through Thursday, rest days of Friday and Saturday, and who had just completed a vacation relief position at 11:00 P.M. Thursday, July 12, 1956.

Carman Hobbs was additionally compensated at the time and one-half rate of pay for working on July 14, 1956.

Mr. Hobbs was, on April 2, 1956, displaced from the carman's craft due to reduction in force and has, since his displacement, been used frequently as a relief employe (Item (1) above). He was last used, prior to the date of this dispute, as a vacation relief employe in place of Car Inspector H. F. Whitson from June 30 to July 12, 1956, inclusive. Upon completion of the vacation relief of Car Inspector Whitson, 11:00 P.M., July 12, 1956, Mr. Hobbs reverted to an off-in-force-reduction status. On July 14, 1956, Car Inspector M. T. Townsend requested permission to be off for personal reasons, therefore Mr. Hobbs was called in to provide relief, and, as stated in "Carrier's Statement of Facts", Mr. Hobbs was also used to provide relief in place of Car Inspector R. J. Lucado on July 15, 1956, who had secured permission to be off for personal reasons. The employes did not take exception to the use of Mr. Hobbs on the temporary one-day vacancy on July 15, 1956.

The employes cite Rule 10 (b) in this dispute; contending that Claimant Lemon should have been called in on his rest day to provide relief on Car Inspector Townsend's vacancy and paid time and one-half for his services. It is the carrier's position that Rule 10 is not a rule for the manufacture of overtime. The purpose of Rule 10 is to distribute overtime equally among employes of each shift as it arises in connection with their regular duties. In the instant dispute, the one-day temporary vacancy did not constitute overtime and the carrier should not be compelled to be penalized by paying overtime in order to grant a favor to an employe who wishes to be off for personal reasons, therefore carrier contends that Rule 10 (b) does not apply in this case. Claimant Lemon, and/or any other regularly assigned employe who may share in the distribution of overtime at Lubbock, were no worse off than they would have been had the carrier refused to permit Car Inspector Townsend to be absent from his duties on July 14, 1956.

In conclusion, carrier asserts that Rule 10 (b), cited by the employes as being violated, does not apply to this case; that there is no rule prohibiting the use of an off-in-force-reduction employe for the protection of a temporary vacancy. The employes do not cite any other rule of the Shop Crafts' Agreement in support of their claim, therefore the employes' claim in this dispute is entirely without support of the agreement rules and should be denied in its entirety.

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.

Claimant, at the time this dispute arose, was assigned as a carman except on Wednesdays—he was assigned as car inspector.

As carman his assigned hours were 7:00 A.M. to 12:00 Noon and 1:00 P.M. to 4:00 P.M. As car inspector his assigned hours were from 7:00 A.M. to 3:00 P.M. His rest days were Saturday and Sunday.

The car inspector assigned to work 7:00 A.M. to 3:00 P.M. on Saturday, July 14, being the day for which claim is made, was off duty for personal reasons. Hobbs was used to work on the vacancy.

According to the carrier, Hobbs was last used, prior to July 14, as a vacation relief employe in place of Whitson, a car inspector, from June 30th to July 12th, inclusive, Whitson's assigned hours were from 3:00 P.M. to 11:00 P.M., rest days Friday and Saturday. However, photostat copy of Hobb's time card shows he worked July 1, 2, 5, 6 and 7 from 7:00 A.M. to 3:00 P.M. Hobbs also worked July 8, 9, 10, 11 and 12 from 3:00 P.M. to 11:00 P.M., and from 7:00 A.M. to 3:00 P.M. and from 4:00 P.M. to 8:00 P.M., July 14th and again from 3:00 P.M. to 11:00 P.M., July 15th. Hobbs worked twelve days of the first fifteen days of July, plus four hours overtime, July 14th. Carrier's argument that Hobbs was an off-in-force-reduction employe cannot be sustained.

Hobbs worked eight consecutive days ending 11:00 P.M., July 12th and was called to work the 7:00 A.M. shift July 14th, the shift claimant contends was rightfully his, and we concur.

We find that the carrier violated the agreement. Therefore, Claim (1) should be sustained in its entirety; Claim (2) should be partially sustained, allowing compensation for eight hours work at the pro rata rate.

AWARD

Claim 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.