

Award No. 3160

Docket No. 2949

2-PRR-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier improperly denied Machinist D. F. Small, time and one-half rate of pay while attending court as a witness for the Carrier on Monday, October 22; Tuesday, October 30; Wednesday, October 31 and Thursday, November 1, 1956.

2. That accordingly, the Carrier be ordered to compensate Machinist D. F. Small, time and one-half rate of pay for October 22, 30, 31 and November 1, 1956, while attending court as a witness for the Carrier.

EMPLOYES' STATEMENT OF FACTS: D. F. Small, hereinafter referred to as the claimant, is employed as a machinist, by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the carrier's New York Service Plant, New York City, New York, on the New York Region.

The claimant is a regularly assigned machinist, Service Plant, New York, tour of duty 3:59 P. M. to 11:59 P. M., rest days, Monday and Tuesday, rate of pay \$2.262 per hour.

On Monday, October 22, 1956, the claimant's assigned rest day, he attended court as a witness for the carrier from 10:00 A. M. to 2:00 P. M., for which he was allowed six (6) hours at the straight time rate of pay, which included two (2) hours' travel time.

On Tuesday, October 30, 1956, the claimant's rest day, he attended court as a witness for the carrier from 10:00 A. M. to 4:00 P. M., for which he was allowed eight (8) hours at the straight time rate of pay, which included two (2) hours' travel time.

On Wednesday, October 31, 1956, the claimant attended court as a witness for the Carrier from 10:00 A. M. to 4:00 P. M., and was relieved from his regular assignment on the 3:59 P. M. to 11:59 P. M. shift. For this day he was allowed eight (8) hours at the pro rata rate of pay.

Award 1468, Referee Carter:

"... Any extension of the scope of the application of the differential must come from negotiation and not by an interpretation which could only have the effect of revising the agreement, a function this Board does not possess."

Award 7577, Referee Shugrue (Third Division):

"Whether or not we feel that appropriating an employee's time in this manner, absent of course a specific rule, is fair or just is not for us to say for this Board does not sit as a court of equity. We are limited to interpreting the applicable agreement provisions as they stand. It would be exceeding our statutory function to allow compensation where the Agreement itself does not authorize it. We do not believe it to be the prerogative of this Board to attempt to do so by reading into the rules something that is not there. We feel that the employee's recourse is to negotiate with the Carrier under Section 6 of the Railway Labor Act."

The carrier asserts, therefore, that the applicable agreement between the parties, particularly Rule 4-K-1, cannot be changed or revised by either the unilateral action of one of the parties or by an award of your Honorable Board.

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 claimant is not entitled to the compensation which he claims.

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 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.

Parties to said dispute were given due notice of hearing thereon.

It is clear from the record in this docket that claimant was entitled to be paid time and one-half for October 22 and 30, which were his rest days and for November 1 when he was actually in service 15 hours. The sole question remaining is whether he is entitled to be paid time and one-half for Wednesday, October 31.

Rule 4(K) i, paragraph 2 provides "employees will not be paid less for this service than their bulletined hours at home station at hourly rate as provided in the Rate Schedule". The organization urges the pay for October 31 should be at time and one-half because the service was performed at a time outside his bulletined hours.

The claimant received his regular hourly rate for this service so it cannot be said that he received less than his bulletined hours.

AWARD

Claim sustained as per findings for October 22, October 30, and November 1st.

Claim denied as to demand for October 31.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.