

Award No. 4416
Docket No. 4258
2-PULL-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current Agreement Inspector Carl Ruth, on June 24, 1961, performed work that rightfully belongs to Pullman Electricians.

2. That accordingly the Carrier be ordered to compensate Electrician B. J. Covell two hours and 40 minutes at the time and one-half rate of pay as provided under Rule 33.

EMPLOYES' STATEMENT OF FACTS: The Pullman Company, hereinafter referred to as the carrier, had twenty-four (24) hours advance notice of the arrival of a special train with instructions to service and pre-cool the equipment. The carrier should therefore have had a sufficient number of men at the station, on arrival of this train, to perform the work as instructed.

Under date of June 26, 1961, Electrician J. M. Burgard wrote a letter to Mr. A. J. Troyani in which he states that he and Assistant Foreman C. C. Covington observed Inspector Carl Ruth placing cars on standby. This is a violation of rules 2 and 5(b).

Under date of July 10, 1961, the I.B.E.W. Committee of L.U. 587 filed a claim addressed to Mr. E. J. Saucier, Foreman, New Orleans, La. This claim was signed by A. J. Troyani, Local Chairman.

Foreman Saucier acknowledged this claim by letter, dated July 14, 1961, advising "your letter will be given careful consideration after which you will be advised fully."

Under date of August 3, 1961, Foreman Saucier again wrote to Local Chairman A. J. Troyani. He did not deny the claim was a just claim and he agreed to pay two hours and forty (40) minutes but only at the straight time rate.

Second Division Award 3444 (Murphy) of the National Railroad Adjustment Board adjudicated dispute between the same parties concerned in the case at hand. In that case the company assigned Electrician J. D. Spangler to relieve Agent-Foreman J. E. Partridge on September 13 and 14, 1958. During this period of relief, Spangler performed a number of hours of electrical work along with his supervisory duties. The organization contended that Electrician J. W. Benton was entitled to perform on his rest days the electrical work performed by Spangler and requested payment to Benton at the overtime rate for work lost. The Board sustained the claim at the pro rata rate and stated, under FINDINGS, as follows:

“The claim as presented for electrician J. W. Benton requests compensation for the work lost at the overtime rate. The overtime rule has no application in this case, so we, therefore order the carrier to compensate Mr. Benton for 12 hours lost to him because of the improper assignment of this work, at the pro rata rate.” (See Pullman Awards (Second Division) 1601, 1622, 1623, 1624, 1625, 1688, 1705, 1799, 3903, 3904.)

Also, see Second Division Awards 1268, 1269, 1530, 2908, 2927, 2956, 2958 and Third Division Awards 3232, 3251, 3271, 3371, 3375, 3376, 3504, 3505, 3609, 3745, 3770, 3837, 3876, 3890, 3910, 4037, 4196, 4244, 4495, 4497, 4535, 4603, 4616, 4690, 4710, 4817, 4828, 4853, 4883, 4930, 4947, 5029, 5200, 5240, 5249, 5467, 5475, 5476, 5548, 5558, 5562, 5607, 5608, 5638, 6095, 8204, 8205, 8303, 8304, 8305 and 8415.

The company submits that when the organization presents a claim it assumes the obligation of presenting a clear and logical account of the facts and of citing rules which support its claim. In the instant case, the organization has not assumed this responsibility. In Third Division Award 4011 (Parker), the Board stated, under **OPINION OF BOARD**:

“The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance . . .”

Also, see Awards 5418, 5758, 3523, 3477 and 2577.

CONCLUSION

In this ex parte submission the company has shown that neither rule 33 nor any other rule of the agreement requires that the company make payment for work not performed at the overtime rate of pay; therefore, Electrician Covell is not entitled to compensation at the punitive rate as claimed by the organization. Additionally, the company has shown that awards of the National Railroad Adjustment Board support the company's position in this dispute.

The claim in behalf of Electrician Covell 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.

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

Claimant is seeking compensation under Rule 33 of the controlling agreement alleging that on June 24, 1961, an Inspector performed Electrician's work at New Orleans.

It is conceded that the alleged violation occurred, and the record so indicates, and we so find.

The sole question to be determined is:

Is Claimant to be compensated under Rule 33, or at the pro rata rate?

Rule 33 reads as follows:

"Rule 33. Calls. An employe notified or called to perform service and reporting therefor outside of his regular bulletined hours (except as provided in Rule 31) shall be compensated for not less than 2 hours and 40 minutes at the rate of time and one-half."

Numerous awards of this and other Divisions of the Adjustment Board, some with supporting reasons, and some with the flat statement, hold that the pro rata rate is the proper rate in a sustaining award for work not performed.

Claimant does not contend that he was called, but alleges that Carrier is attempting to circumvent Rule 33 by not making a call; performing the work in violation of the agreement; and then if called to task, settling the matter at the pro rata rate.

This record does not support this alleged design of the Carrier.

Before Rule 33 can come into play there must be a call and reporting. It does not govern the rate for work not performed which is the basis of the claim before us. The conditions which make the higher rate applicable have not occurred here, and we adhere to our former awards that the pro rata rate is the proper rate in a sustaining award for work not performed.

AWARD

Claim 1: Sustained.

Claim 2: Sustained, except that the compensation shall be at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1964