

**Award No. 4518**

**Docket No. 4434**

**2-KCT-EW-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYEES'  
DEPARTMENT A. F. of L. - C. I. O. (Electrical Workers)**

**KANSAS CITY TERMINAL RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** 1—That the controlling agreement, particularly Rule 9 and Rule 22, were violated when the Kansas City Terminal Railway Company denied Electrician Helper A. B. Gray to work his regular assignment on December 22 and 29, 1961, respectively.

2—That accordingly, the Kansas City Terminal Railway Company compensate Electrician Helper A. B. Gray in the amount of eight (8) hours at the pro rata rate for December 22, 1961, and eight (8) hours at the pro rata rate for December 29, 1961, for not permitting Mr. Gray to work his regular assignment on these dates.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. A. B. Gray, hereinafter referred to as the claimant, is employed by the Kansas City Terminal Railway Company, hereinafter referred to as the carrier, in the capacity of electrician helper at Kansas City, Missouri.

The claimant's regular assigned work week is 11 P. M. to 7 A. M. Tuesday and Wednesday at the Union Station; 3 P. M. to 11 P. M., Thursday at the Union Station; 8 A. M. to 4 P. M., Friday and Saturday working extra in the coach yard. Rest days Sunday and Monday.

On Thursday, December 21, 1961, the claimant worked his regular shift from 3 P. M. to 11 P. M. at Union Station. Upon completion of his regular shift he doubled over and worked the next shift from 11 P. M. to 7 A. M. at the Union Station. However, when he reported for his regular assignment on Friday morning, December 22, 1961 (8 A. M. to 4 P. M.) he was advised by his supervisor that he could not work his regular assignment and was sent home.

On Thursday, December 28, 1961, the claimant worked his regular shift from 3 P. M. to 11 P. M. at Union Station. Upon completion of his regular

“When it becomes necessary for employes to work overtime, they shall not be laid off during regular working hours to equalize the time.”

It cannot be successfully contended that claimant was laid off during his regular hours to “equalize time.” Mr. Gray’s assignment on December 22 and 29 was filled by another electrical worker from the overtime board, called by the bookman and paid at time and one-half rate. Obviously, there was no equalizing or absorbing of time. The claimant’s regular workweek is 40 hours. In each week involved, he did not work less than 40 hours. In fact in the week of December 19, 1961, he worked 40¼ hours, with 8¼ hours at time and one-half; in the week beginning December 26, 1961, he worked 47¾ hours, with 16 hours at rate of time and one-half. The intent of Rule 9 is to protect the employe from not being allowed to work the 40-hour week because of whatever overtime he may work.

The error of the bookman, and failure of Claimant Gray to refuse the extra work in view of the standing instructions, resulted in unnecessary extra expense to carrier.

Other electrical workers, L. J. Martin, W. E. Loveland, G. R. Johnson and T. S. Stoner were available to work the 11 P. M. to 7 A. M. shift on claim dates, had Gray not sought the work and Gray could then have covered his regular assignment at straight time.

### III

If it were to be construed that there has been a violation of Rule 9, which, of course, we do not admit, the penalty requested is utterly unwarranted. As previously explained, the assignment of overtime, and the emergency filling of temporary vacancies is handled by an employe represented by the organization involved here. Specific instructions are in effect that electrical workers are not to be worked twenty-four hours continuously, as it is unsafe for a man to work that long around live passenger trains. This claim is the direct result of sharp practices by the electrical workers. The electrical worker in charge of assigning extra work, together with claimant, conveniently overlooked the Carrier’s instructions, thus setting up a potential claim for penalty compensation.

In Third Division Award 4954, Referee Carter said:

“A party will not be permitted to recover reparations for a violation of an agreement which he himself induced.”

**CONCLUSION:** The record shows Claimant Gray elected to fill the vacancy on position of another employe. Rule 10 provides for no guarantee or penalty other than rate to be paid for work performed.

Since Claimant Gray was not laid off during his regular working hours to “equalize the time” there was no violation of Rule 9.

This claim 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 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.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts of the case are that the Claimant on the days in question worked his regular shift from Thursday 3:00 P. M. to 11:00 P. M. and upon the completion of his regular tour, at the Carrier's request, doubled over and worked the 11:00 P. M. to 7:00 A. M. shift. When he reported for his regular assignment on Friday at 8:00 A. M. his supervisor advised him that he could not work his regular assignment and sent him home.

Upon a review of the pertinent rules of the Agreement, the Division concludes that the claim comes squarely within the language of Rule 9 which holds:

"When it is necessary for employees to work overtime they shall not be laid off during regular working hours to equalize working time."

In the first instance the Division finds no substance to the Carrier's contention that the Claimant did not work overtime but merely worked a shift which was paid a premium rate. The Claimant's tour of duty from 11:00 P. M. to 7:00 A. M. was not a tour of duty which *per se* received a premium rate. The Carrier only paid a premium rate for that shift because it was overtime work *vis a vis* the Claimant. Since the Claimant had worked overtime, the Carrier could not under the existing Rule deny the Claimant the right to work his regular shift in order to equalize working time. Admittedly there are good and persuasive reasons why the Carrier might not want the Claimant, or any other employee, to work 24 consecutive hours, nevertheless there is no rule to that effect and the Carrier produced no Instructions of similar purport. Carrier's Exhibit "A" attached to its Submission is extremely tenuous support for its position posited against the clear language of Rule 9.

The Division has also previously construed the language of Rule 9 in Awards Nos. 994 and 1266 in a manner consistent with aforementioned findings.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June, 1964.