

**Award No. 5484
Docket No. 5320
2-AT&SF-EW-'68**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Railway Company party to this dispute, erred and violated the provisions of the Agreement existing between the parties to dispute, when on October 2, 1964 they assigned Electrician H. A. Shannon to work on Trailers 40604 and 504403.

2. That accordingly, Electrician Davis Lee Webber be compensated for five and one-half (5½) hours at his regular overtime rate of pay for said violation.

EMPLOYES' STATEMENT OF FACTS: Mr. David Lee Webber, hereinafter referred to as the Claimant, is an hourly rated employe assigned five (5) days of work with two (2) consecutive rest days, and employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the Carrier, in their Los Angeles Terminal Mechanical Department, as a qualified electrician.

This dispute has been handled with the proper Carrier officers designated to handle such disputes, with the net result that all have denied the claim and refused to make any corrections and/or changes in the conditions which generated this dispute.

The Agreement effective August 1, 1945, as subsequently amended, is controlling.

POSITION OF EMPLOYES: At the Los Angeles Terminal of the Carrier, there exists between the Carrier and the Employes, Agreements governing and controlling the distribution of overtime with the provisions of Rule 10(b) of the August 1, 1945 Agreement, as amended.

necessary in reply to the Employees' ex parte submission or any subsequent argument or briefs presented by the Employees in this dispute.

All that is contained herein has been both known and available to the Employees or their representatives.

(Exhibits not reproduced.)

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.

The facts in this dispute are that on October 2, 1964, Electrician H. A. Shannon worked overtime on repairing Refrigerated Trailer No. 40176 at the Hobart Repair Track facility at Los Angeles, California. Prior to completing the work on said Trailer No. 40176, Employee Shannon was advised by Carrier to remain and also to make repairs to Refrigerated Trailers No. 504403 and 40604.

The Employees' position is that it was proper for Electrician Shannon to be allowed to work overtime to complete the repairs to Trailer No. 40176 inasmuch as he started said job prior to quitting time and regardless of his standing on the overtime roster, but that Carrier violated Rule 10(b) in regard to distribution of overtime when it assigned Electrician Shannon to work on said Trailers No. 504403 and 40604 rather than call in another employe, the Claimant herein, who had a less amount of overtime hours and was qualified to do the work.

Carrier's defense to this claim is that an "Emergency" existed which permitted Carrier to use Electrician Shannon rather than Claimant for the repair work on said trailers.

In asserting that an "Emergency" existed, Carrier thus is raising an affirmative defense, and the burden is upon Carrier to prove such defense by competent evidence. No factual evidence was adduced by Carrier to support this allegation of an "Emergency". Mere assertions cannot be accepted as proof. Therefore, we must reject said contention of Carrier that an "Emergency" did exist in this instance.

It is the opinion of this Board that Carrier violated the Agreement when it failed to call Claimant for overtime work on Trailer Nos. 504403 and 40604.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.