

Award No. 5638
Docket No. 5560
2-AT&SF-EW-'69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM
(Western Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the Agreement the Carrier erred when they failed to properly compensate Electricians C. R. Kerr, F. L. O'Neal, D. R. Pugh, H. J. Leach, E. L. Montgomery, M. Basham, T. J. Wicker, B. G. Wingate, S. D. Bradley and S. N. Roper, when they performed work, March 17th, March 18th, March 21st, March 22nd, March 25th, March 28th, March 29th, March 30th, and April 7th, for differential work performed.

2. (a) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician C. R. Kerr, an additional six cents (6¢) per hour for the hours and dates of March 17, and one (1) hour; March 18, eight (8) hours; March 21, eight (8) hours; March 22, two and one-half (2½) hours; March 25, four (4) hours; March 28, eight (8) hours; March 29, two (2) hours; March 30, one (1) hour; and April 7, one (1) hour, for a total of thirty-five and one-half (35½) hours, all of the above hours were worked in the months of March and April, 1966.

(b) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician F. L. O'Neal, an additional six cents (6¢) per hour for the hours and dates of March 17, one (1) hour; March 18, eight (8) hours; March 22, eight (8) hours; March 23, eight (8) hours; March 24, eight (8) hours; March 25, eight (8) hours; March 28, eight (8) hours; March 29, six and one-half (6½) hours; March 30, three (3) hours, for a total of fifty-eight and one-half (58½) hours. All of the above hours were worked in the month of March, 1966.

(c) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician D. R. Pugh, an

additional six cents (6¢) per hour for the hours and dates of March 30, five (5) hours; March 31, five and one-half (5½) hours; April 1, five (5) hours; April 4, four (4) hours; April 5, two (2) hours; April 6, five (5) hours; April 7, five (5) hours; April 11, four (4) hours; April 12, five (5) hours; April 15, four (4) hours; April 18, six (6) hours; April 22, eight (8) hours; May 2, five (5) hours; May 3, four (4) hours; May 5, six (6) hours; for a total of seventy-five and one-half (75½) hours. All of the above hours were worked in the months of March, April and May, 1966.

(d) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician H. J. Leach, an additional six cents (6¢) per hour for the hours of March 17, one (1) hour; March 18, eight (8) hours; March 21, eight (8) hours; March 22, eight (8) hours; March 23, eight (8) hours; March 24, eight (8) hours; March 25, eight (8) hours; March 28, eight (8) hours; March 29, six and one-half (6½) hours; March 30, eight (8) hours; March 31, eight (8) hours; April 1, four (4) hours; April 7, four (4) hours; April 8, eight (8) hours; April 11, seven (7) hours; April 13, six (6) hours; April 22, eight (8) hours, for a total of one hundred and sixteen and one-half (116½) hours. All of the above hours were worked in the months of March and April, 1966.

(e) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician E. L. Montgomery, an additional six cents (6¢) per hour for the hours of April 21, four (4) hours; April 22, eight (8) hours; for a total of twelve (12) hours. All of the above hours were worked in the month of April, 1966.

(f) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician M. Basham, an additional six cents (6¢) per hour for the hours and dates of April 21, four (4) hours; April 22, eight (8) hours; for a total of twelve (12) hours. All of the above hours were worked in the month of April, 1966.

(g) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician T. J. Wicker, an additional six cents (6¢) per hour for the hours and dates of April 25, six and one-half (6½) hours; April 26, eight (8) hours, for a total of fourteen and one-half (14½) hours. All of the above hours were worked in the month of April, 1966.

(h) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician B. G. Wingate an additional six cents (6¢) per hour for eight (8) hours for the date of April 29, 1966.

(i) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician S. D. Bradley an additional six cents (6¢) per hour for eight (8) hours for the date of April 25, 1966.

(j) That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Electrician S. N. Roper an additional six cents (6¢) per hour for eight (8) hours for the date of April 25, 1966.

D. C., BNA Incorporated, 1960, pp. 203-204, and cases cited therein. Since the 1944 understanding contains a special rule, it supersedes the general Rule 26 in appropriate instances."

Rule 15 is only applicable in those instances where no special rules apply. The framers of the present Agreement made no exception for those who might on occasion be required to perform some work on those parts of Automatic Train Stop and Train Control equipment listed in Rule 96(f) when they inserted the phrase, "regularly assigned." Your Honorable Board will also note that this phrase is used not only in Rule 96(f), but also in Rules 96(c), 96(d), and 96(e), and it is only to such assigned employees that differentials are paid. Many electricians on various occasions do perform the work listed in Rules 96(c), (d) and (e), but because they are not regularly assigned to perform such work they are paid only their regular electrician's rate.

The practice of paying a differential rate to only the electrician regularly assigned to perform the work listed in Rule 96(f) has been followed for many years, and is what the language of the rule requires. The present Rule 96(f) is the same as Rule 115(e) of the Agreement effective July 1, 1937, which had been applied in the same manner then as now. This interpretation has been accepted by the Employees until the instant claim was filed, as is evidenced by the fact that in March of 1946 the Local Chairman of the Electricians instituted a claim on the Carrier's Coast Lines, but this claim was not progressed after it was declined on the local level. Your Honorable Board has consistently held that in the case of ambiguous rules, the practice must be considered to determine how the parties to the Agreement have interpreted the rule, but since here we have an unambiguous rule, with an established practice which has followed the exact wording of the rule for over 20 years, the Petitioner has no support for the claim that each of the claimants should be allowed a differential rate of six (6) cents per hour for each hour that he occasionally worked on the ten (10) sets of automatic train stop and train control equipment.

Even if the claimants are entitled to a payment of six (6) cents per hour differential as claimed under Rule 96(f), and they are not, they are not entitled to a differential of six (6) cents per hour for the total of 346.5 hours claimed. As stated on page 8 hereof, a total of only 135 hours was used by the claimants in working on the parts of this train control equipment listed in Rule 96(f).

In conclusion, the Carrier reasserts that the claim of the Employees in the instant dispute is without merit or support under the Agreement rules and should be denied for the reasons expressed herein.

(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 employee or employees 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 were given due notice of hearing thereon.

All of the named Claimants were part of the electrical force at Cleburne, Texas, assigned to work from 8:00 A.M. to 12 Noon and 12:30 P.M. to 4:30 P.M. Monday through Friday. In February of 1966, Carrier required 10 sets each of Automatic Train Control units and Automatic Train Stop units removed from storage and overhauled for use on new passenger locomotives which were to be delivered to this Carrier in June and July of 1966. From March 17 through May 5, 1966, these Claimants, in addition to their normal duties, but during their regular assigned hours, performed and assisted in the performance of overhauling the ATC and ATS units. The Organization makes claim for an additional 6 cents per hour for the time each Claimant was used to renovate this equipment, and relies on Rule 15 and 96(f) as support for this Claim. These rules are as follows:

"RULE 15.

Where an employe, except apprentices, is required to perform work carrying a higher rate of pay, he shall receive the higher rate of pay, but if required temporarily to perform work carrying a lower rate, his rate will not be changed."

"RULE 96.

(f) Electricians highly skilled in and regularly assigned to constructing, overhauling, rebuilding, and repairing automatic train control relays, amplifiers, receivers, and dynamotors, shall be paid six cents (6¢) per hour above the minimum rate paid electricians at point employed."

During the time this renovation work was being performed, Electrician J. N. Parrish was assigned at this location to repair Automatic Train Control equipment, and was paid at the rate required under Rule 96(f). Carrier contends that these Claimants assisted Parrish; that Parrish actually handled the polarization in addition to the working and testing the six (6) amplifiers listed under the ATC equipment; and that the pay rate paid to these Claimants was in line with past practice on this property.

In order to properly interpret Rules 15 and 96(f), each must be considered in conjunction with the other. One provision of an Agreement cannot be considered to the exclusion of all other provisions. Therefore, this Board finds that Rule 15 is a general rule, subject to possible exceptions, modifications or enlargements contained in other provisions of the same agreement. This Board finds that Rule 96(f) is such a modification to Rule 15 in that Electricians only are affected. Rule 96(f) sets out two criteria that these Claimants must meet in order to qualify for the 6 cents differential pay: They must be "highly skilled", and they must be "regularly assigned" to perform the renovation of the units involved in this dispute.

The record discloses that the question of Claimants' skill was not raised on the property by the Carrier, and under the rules of this Board, it cannot

properly be raised at this late date. Therefore, the only question that must be resolved is whether or not the named Claimants were "regularly assigned" to perform this work.

There is no dispute to the fact that these Claimants did perform a substantial number of hours on the involved units; likewise, there is no dispute to the fact that they were assigned to work on these units during their regularly assigned hours at times when their normal duties did not require their attention. A close scrutiny of Rules 15 and 96(f), when considered in conjunction with each other, reveals a contemplation by the signatory parties that these particular rules pertain to temporary situations such as involved in this dispute. Therefore, this Claim will be sustained.

The record discloses a discrepancy in the number of total hours claimed: 346.5 hours and 335 hours. Therefore, the claim is remanded back to the property for the purpose of ascertaining the correct number of hours.

Finding is that the Agreement was violated.

AWARD

Claim sustained with the provision that the correct number of hours will be ascertained by the parties on the property from the Carrier's accounting records.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February, 1969.