Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7167
SECOND DIVISION Docket No. 7037
2-SP(PL)-MA-'76

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

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Southern Pacific Transportation Company
((Pacific Lines)

Dispute: Claim of Employes:

1. That Carrier has improperly computed wages for service in the month of June 1975 for monthly rated Traveling Motor Car Mechanic M. R. Schaible (hereinafter referred to as Claimant).

2. That Carrier be ordered to compensate Claimant at the rate of time and one-half for each hour of service in excess of 175 1/3 for the month of June, 1974.

3. That Carrier be ordered to compute Claimant's rate of pay pursuant to the provisions of Rule 2 (b) of the Agreement effective May 1, 1948, (revised April 1, 1960), Article II, Section 2 (a) of the Agreement dated August 21, 1954, Article II, Section 6 (a) of the Agreement dated February 4, 1965 and Article II, Section 1 (d) of the Agreement dated October 7, 1971.

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 waived right of appearance at hearing thereon.

This dispute requires interpretation of Rule 2(b) and the further resolving of whether or not a standard rate should apply in lieu of a fluctuating scale now used by Carrier. Rule 2(b) of the controlling Agreement is as follows:

"Monthly rated traveling motorcar mechanics assigned to duties requiring them to work, wait or travel as regulated by train service in the character of their work, and for whom hours can not be definitely regulated, shall be paid a monthly rate on a working day basis (excluding employe's rest days and holidays) to cover all services required and performed on such day. No overtime will be allowed for time worked in excess of eight (8) hours per day; no time will be deducted unless the employe is furloughed, suspended, incapacitated, on leave of absence, his position is abolished, or he is displaced therefrom. *****"

The basic monthly rate received by Claimant at the time of the instant claim was $1,019.23, which is predicated upon 175 1/3 hours of service per month. It is the contention of the Organization that any time after 175 1/3 hours, overtime applies. Carrier contends that overtime does not apply in any event because of the above quoted Rule 2 (b) and more specifically the underlined portion of said Rule above quoted. In this dispute, Claimant worked 292 1/2 hours in the month of June, 1974, which was 117 1/6 hours in excess of the normal monthly hours of service of 175 1/3. Of the total 292 1/2 hours worked by Claimant 60 hours' service was performed on rest days and Claimant was compensated for these 60 hours at time and one-half rate. 57 1/6 hours were worked on regular work days in excess of the established monthly hours of 175 1/3 for which Claimant was compensated at the straight time. Therefore, this Claim is submitted for time and one-half rate of pay for the 57 1/6 excess hours, which has been denied by Carrier. There is no dispute between Parties relative to the monthly rate in existence at the time of this Claim ($1,019.23) or the fact that the monthly rate is predicated upon 175 1/3 hours per month. Rule 2(b) is specific in requiring the straight time hourly rate to be determined by dividing the monthly rate by the number of hours comprehended by said rate, which is 175 1/3. The straight time hourly rate as comprehended by Rule 2(b) is $5.81 ($1,019.23 divided by 175 1/3 equals $5.81); however, Carrier uses a method whereby the rates fluctuates from a low of $5.54 for a 23 day work month to a high of $6.71 for a 19 day work month. It is the position of the Organization that all hours of service performed by Claimant during the month of June, 1974, which were in excess of 175 1/3 should have been paid at the time and one-half rate. It is the position of Carrier that Rule 2(b) precludes the payment at the overtime rate for any hours in excess of the 175 1/3, except those hours performed on rest days and holidays. It is the opinion of this Board that it was not the intent of the Agreement to place monthly rated employes in a worse position with respect to compensation than hourly rated employes. To uphold Carrier's position, monthly rated employes would be penalized. Therefore, this Board holds that the Agreement intended to apply to the extent that employe has not exceeded the 175 1/3 hours per month; and that when an employe such as Claimant has performed service of 175 1/3 hours per month, all hours in excess thereof for any such month shall be at the rate of time and one-half. This Board further holds that the standard $5.81 rate shall be applied to all straight time issues, and that the fluctuating scale now used by Carrier shall be discontinued.

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A W A R D

Claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of November, 1976.

CARRIER MEMBERS' DISSENT TO AWARDS 7167, DOCKET 7037
7168, DOCKET 7038
7169, DOCKET 7040
7170, DOCKET 7041

In these awards the Referee correctly holds that Rule 2(b) is controlling, but then exceeds the jurisdiction of the Board by arbitrarily refusing to apply the rule as it is plainly written.

Rule 2(b) states that to monthly rated employees "No overtime will be allowed for time worked in excess of eight (8) hours per day. . ." Thus, the parties could not have written a more clear, direct and absolute prohibition against allowing overtime for time worked in excess of eight hours per day. This prohibition is not discriminatory because other benefits which guarantee the monthly rated employee appropriate and adequate compensation are provided for in the agreement.

In drafting these awards, the Referee has refused to apply these clear provisions in Rule 2(b), and has attempted to engraft limitations thereon. The sole reason offered for this action is obviously arbitrary. This reason is stated as follows:

> ". . . It is the opinion of this Board that it was not the intent of the Agreement to place monthly rated employes in a worse position with respect to compensation than hourly rated employes. . ."

The assumption which serves as the sole basis for this "opinion", namely, that monthly rated employees will be in a worse position with respect to compensation than hourly rated employees if overtime is not allowed contrary to the clear provisions of the rule, is utterly false and unsupported by anything in the record; but even if this assumption were correct, it could not properly serve as a basis for refusing to apply the clear and unequivocal provisions of the rule as the parties have written them.

It is elementary law that this Board's powers are limited to the interpretation of agreements. We have no right to ignore clear provisions of an agreement or to change such provisions, either overtly or under the guise of interpretation.

We respectfully submit it is obvious that these awards constitute an invalid attempt to change the parties' agreement; and we direct attention to the fact the new method of payment which the Referee has illegally attempted to establish would have the preposterous effect of requiring the payment of overtime to a monthly rated employee for working during his regularly assigned hours at the end of a long month.

The memorandum submitted by the Carrier Member at the panel discussion of this case correctly states the issues as well as the law, and it is incorporated herein by reference.

We dissent.

C. J. Taylor

J. Ellison

D. C. Carter

W. B. Jones

G. M. Goodwin