Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7170
SECOND DIVISION Docket No. 7041
2-SP(PL)-M-'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 1974 for monthly rated Traveling Motor Car Mechanic D. R. Jones (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.

The facts giving rise to this dispute are identical to the facts contained in Award No. 7167. Therefore, this Claim will be sustained for the same reasons as set out in Award No. 7167.

A W A R D

Claim Sustained.

Award No. 7170
Docket No. 7041
2-SP(PL)-MA-'76

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.

D. T. Naylor

L. Mason

D. C. Carter

W. B. Jones

J. M. Jordan