

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Form 1

Award No. 12786
Docket No. 12721
94-2-93-2-177

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE:

(International Brotherhood of Electrical
(Workers, AFL-CIO, System Council No. 2
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(Union Pacific Railroad Company
((Former Missouri Pacific
(Railroad Company)

STATEMENT OF CLAIM:

- "1. That the Missouri Pacific Railroad Company violated the controlling agreement by their arbitrary actions reducing Electrician J. I. Moore's eight (8) hour work day of his regular assignment on November 6, 1991 and, thus, his forty (40) hour five (5) day work week to which he is entitled under Rules 1 and 2(a) of the June 1, 1960 controlling agreement; and misapplied Rule 8(a) of the same controlling agreement when they laid him off from four (4) working hours of his regular assignment on November 6, 1991 to equalize the overtime he worked in North Little Rock, Arkansas.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician J.I. Moore four (4) hours at the straight time rate for November 6, 1991."

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 waived right of appearance at hearing thereon.

On the claim date, the Claimant was called to work overtime from 11:00 p.m. to 7:00 a.m., at which time he assumed his normal position. But, because he had been moving locomotives on the overtime assignment which (according to the Carrier) placed him under the Hours of Service Act, he was precluded from working any more than four hours on his regular assignment. At the end of the four hours, the Carrier released the employee from duty.

The Organization, at page 2 of its submission, concedes that employees who perform work on Cab Control Signals (CCS) are considered "covered employees" and are subject to the provisions of the Hours of Service Act and, as such, must comply with certain requirements. In this case, the Carrier decided that the Claimant's overtime assignment would place him under the Act.

The Claimant was only permitted to work four hours of his regular assignment and, in addition, he sought four hours for time not worked because the Carrier refused to permit him to do so.

The Agreement provides that eight hours shall constitute a day's work and, when employees work overtime, they are not to be laid off during working hours to equalize the time.

Although the Carrier has argued that it was the Hours of Service Act, and not the Carrier itself that created the problem, the Organization points out that, indeed, it was the Carrier that created the dilemma by assigning the Claimant to fill an overtime position that was consecutive to his regular assignment and it is the Carrier, not the employee, who decides what work the employee will perform.

This Board is of the view that the Carrier must bear certain responsibility in its assignment to employees. By its assignment, it created this situation because the Carrier placed the Claimant under the Hours of Service Act. Since the Agreement defines a work day as eight hours, Carrier violated the Agreement by the actions complained of herein, and the claim is sustained.

A W A R D

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmarked date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois this 17 day of November, 1994.