

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13318

Docket No. 13008

98-2-95-2-42

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(International Brotherhood of Electrical Workers
(System Council No. 16

PARTIES TO DISPUTE: (

(Burlington Northern Railroad

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Mechanical Department Electrician Dan Peterson was improperly compensated while he temporarily filled a Foreman’s position, and;
2. That accordingly the Burlington Northern Railroad Company should be directed to compensate Mechanical Department Electrician Dan Peterson an additional one (1) hour’s pay, plus an additional 20% for each of the hours for the time he was temporarily filling the Foreman’s position.”

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.

The Claimant is an Electrician assigned to the Carrier's locomotive repair facility at West Burlington, Iowa. On four consecutive days in February 1994, one of the Carrier's Foreman was absent. That Foreman normally supervised the second shift which worked from 4:00 P.M. to 12:00 A.M. However, the Foreman himself worked from 3:30 P.M. to 12:30 A.M., a total of nine hours.

The Organization contends that the Claimant was required to perform service for nine hours on each of the four days. Therefore, he was entitled to the 20% differential on his daily rate of pay applied to nine hours. In other words, the Organization seeks a payment for nine hours plus an additional 20%.

Rule 32 is applicable to this claim. It reads as follows:

"An employee assigned temporarily to fill a Foreman's position will assume the hours of service applying to such position and will be paid a differential of 20% above his daily rate of pay for all services performed as a temporary foreman."

Neither party provided negotiating history leading to Rule 32 when it was incorporated into the parties' 1984 Agreement, and there is no evidence that the questions raised by the claim at issue in this case have ever been raised before. Accordingly, the Board has carefully reviewed the arguments presented by the parties before the Board and in their on-property arguments.

The framers of the Agreement appear to have been aware that Foremen many times worked more than eight hours a day and that Foremen frequently were salaried employees. Rule 32 provides two elements. The first element defines "the hours of service applying to the position." The second part of the Rule describes the pay for the services provided. The parties clearly intended to compensate persons who were assigned to temporarily fill the Foreman position and Rule 32 was crafted to so require.

Rule 1(a), Hours of Service and Work Week provides that non-supervisory personnel have an eight-hour workday. However, Rule 32 also states that when a non-supervisory hourly employee is assigned as a Temporary Foreman, that employee will "assume" (on a temporary basis) the hours of service" of the full-time Foreman. In this case, this Rule required the Claimant to work nine hours. However, Rule 2 requires also that he be paid "a differential of 20% above his daily rate of pay." This is a reference

to the rate of pay earned by the employee in his regular occupation. Thus, in this case, the Claimant would be paid for eight hours of work as an Electrician plus an additional 20% of his hourly rate in that position. Rule 32 does not require payment based on a nine hour day plus an additional 20% based on performing for nine hours.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of September 1998.