

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13341
Docket No. 13144
98-2-96-2-46**

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

(International Association of Machinists and
(Aerospace Workers (District 19)
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- “(1.) The Consolidation (sic) Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 4-B-1, 4-B-2 and appendix ‘G’.**
- (2.) Accordingly, the claimants are entitled to the remedy as requested. An additional payment of \$2.04 each for July 4, 1994 holiday.”**

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 Claimants in this dispute held Machinist Instructor positions at the Carrier’s Enola Diesel Terminal. The facts, which are not in dispute, show that, on July 4, 1994, the Claimants worked eight hours of overtime. For this work, each was compensated

at the time and one-half rate of their regular hourly rate. In addition, each was paid a 50 cent per hour Instructor Differential. The Organization contends this Differential should also be paid at the time and one-half rate, i.e., 75 cents.

The Board finds no Agreement support for the Organization's position. The differential entitlement for Instructor work is governed by the Collective Bargaining Agreement, Appendix "G", Memorandum of Understanding Covering Machinist Instructor. It reads as follows:

"APPENDIX 'G'

**MEMORANDUM OF UNDERSTANDING COVERING
MACHINIST INSTRUCTOR**

Position of Machinist instructor may be established at the sole discretion of the Company, Such positions, when established, may be utilized to train apprentices or trainees and mechanics in all phases of Machinist's work and to teach mechanics techniques to be used in training of apprentices or trainees.

These positions shall be subject to all rules of the agreement effective May 1, 1979, except those dealings with advertisement, displacement, starting time, rest days and hours of assignment, provided, however, that the overtime provisions shall apply after completion of forty (40) hours' work in any week. Such instructor positions may be filled by the Company from employees having more than sixty (60) days seniority on a Machinist roster.

Employees assigned to such instructor positions shall be paid 50 cents per hour above the Grade 'E' rate.

The establishment of this classification of Machinist Instructor in no manner restricts the Company from utilizing other than Machinists in training functions."

On the other hand, the payments of overtime are governed by Rules 4-B-1 and 4-B-2. These provisions read in pertinent part as follows:

RULE 4-B-1. (a)

“Time worked by an employee in excess of eight (8) hours in any 24-hour period, computed from the starting time of the employee’s regular shift, will be considered as overtime and paid for at the rate of time and one-half. . . .”

RULE 4-B-2. (a)

“Work performed on the following legal holidays, namely:

In the United States

New Year’s Day
Washington’s Birthday
Good Friday
Decoration Day
Fourth of July
Labor Day
Veterans Day
Thanksgiving Day
Christmas Eve
Christmas

In Canada

New Year’s Day
Good Friday
Easter Monday
Victoria Day
Dominion Day
Civic Day
Labour Day
Thanksgiving Day
Christmas Eve
Christmas

(Christmas Eve will be the day before Christmas is observed)

or the day observed shall be paid for at the time and one-half rate with a minimum of three (3) hours.”

The evidence shows that the payment procedure being challenged in this dispute has been accepted by the parties since early 1979. It has been well established that the Instructor Differential is not a rate of pay. Appendix G provides that any change to the 50 cent Differential will be by agreement only. Nowhere in Appendix G is it stated that the Differential is subject to the overtime provision of Rule 4-B-1.

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 24th day of November 1998.