

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13566

Docket No. 13384

00-2-98-2-72

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(Burlington Northern Santa Fe Railway Company (former
(Atchison, Topeka and Santa Fe Railway Company)

STATEMENT OF CLAIM:

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the “Carrier”) violated Rule 1 and 10 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly denied Amarillo, Texas Machinist M.A. Erdman (hereinafter referred to as the “Claimant”) his contractual right to work eight hours each day on eight different occasions.

Accordingly, for this violation of the Agreement we request that the Claimant be compensated at his pro rata rate for the thirty-two hours he was denied the opportunity to work his regular shift.”

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.

By this claim the Organization seeks payment on behalf of the Claimant for four hours each on eight days in August 1997 when he was required to go home half way through his regular shift due to the Hours of Service Act. The parties have agreed to have the issue raised by this claim decided in this case, as a lead case, and apply the resolution herein to five other outstanding claims.

The facts are not in dispute. The Claimant's regular position was as a Machinist in Amarillo, Texas, with assigned hours of 3:00 P.M. to 11:00 P.M. and rest days of Friday and Saturday. The Claimant voluntarily worked overtime from 7:00 A.M. to 3:00 P.M. on each of the days of August 11, 12, 13, 14, 18, 19, 20 and 26, 1997 in a position which required him to move locomotives, and was thus covered under the provisions of the Hours of Service Act. Under that law, the Claimant was restricted from working more than 12 hours in a 24 hour period. Therefore, the Claimant could not legally perform service after 7:00 P.M. on those dates, was sent home in the midst of his regular shift, and was not compensated for the four hours between 7:00 P.M. and 11:00 P.M. He was paid at the overtime rate for the eight hours he worked prior to his regular shift, and his pro rata rate for the four hours of his regular shift.

The Organization argues that the Carrier violated Rules 1 (a) and (d) by failing to pay the Claimant for the balance of his regular shift on the claim dates. It does not take issue with the propriety of the Carrier sending the Claimant home after 12 hours under the Hours of Service Act, but does assert that it was the Carrier's choice to allow the Claimant to work overtime knowing that he would not be able to complete his regular shift, and despite the eight hour daily guarantee contained in the Agreement. It relies upon Second Division Award 12373 and Third Division Award 28578 for the proposition that when the Carrier places the Claimant into the position where he is unable to complete his regular shift, he is entitled to pay for the lost time.

The Carrier contends that the Claimant voluntarily worked the overtime with full knowledge that he could not complete his regular shift due to the provisions of the Hours of Service Act. Under such circumstances, the Carrier argues that it was not required to pay him for the hours of his regular assignment that he did not work, since the Hours

of Service Act takes precedence over the collective bargaining Agreement, citing Fourth Division Awards 4859, 4996; Third Division Awards 15947, 17928, 31979.

We have carefully reviewed the record in this case as well as the precedent cited by the parties. We are of the opinion that this case falls more squarely within the confines of the cases relied upon by the Carrier, since the overtime accepted by the Claimant herein was voluntary, and was not required or compelled by the Carrier, see Fourth Division Award 4859; Third Division Award 17928. As posited by the Board in Fourth Division Award 4996 and Third Division Award 15947, since the Carrier could not legally offer the Claimant the opportunity to complete his shift under the Hours of Service Act which takes precedence over collective bargaining guarantee provisions, the Claimant has not proven any lost time on the dates in question. In the absence of a specific Rule providing for payment in these circumstances, which the Organization has not put forward, we are unable to conclude that the Carrier has violated the Agreement.

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 14th day of November, 2000.