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M L Shah
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THE SUPREME COURT OF INDIA
LABOUR COURT No. 2, BOMBAY

PRESENT

Shri M.A. Deshpande,
Presiding Officer

Application Nos. LC-2/151 to 188, 224 to 344
543 to 552 and 789 to 794 of
1982

PARTIES

Shri R.S. Mir, shi and 93 others

: Applicants

Vs.

The Divisional Superintendent,
Western Railway, Bombay Central.

: Respondent

APPEARANCES

For the Applicants

: Shri M.B. Anchan,
Advocate

For the Respondent

: Shri P.R. Pai,
Advocate

Industry

: Railways

State

: Maharashtra

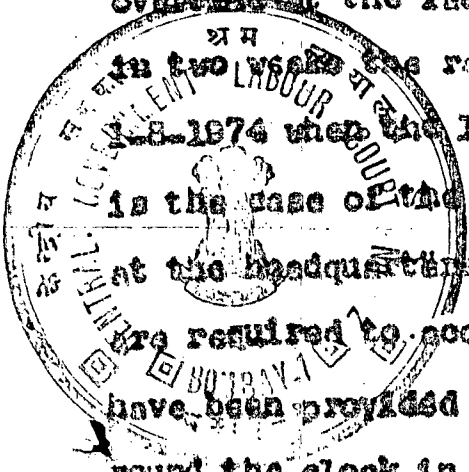
Bombay dated the 25th May, 1983

JUDGMENT

(Dictated in the open Court)

The applicants who belong to various categories admittedly called continuous workers under the Hours of Employment Regulations, on the allegation that some payment is due by way of overtime payment have filed the present applications under Section 33C(2) of the Industrial Disputes Act, 1947. The category to which the applicants belong and the year from which the claim has been advanced are to be had in annexure 'A' which annexure also indicates the date of filing of various applications. The applications as could be seen from Annexure 'A' are serving as Electrical chargemen, Mechanic oil engine, air condition mechanic, Electrical Fitters, Oilers and Khalasis. Since the claim of all these applicants are similar, so also the defence, by consent

of the parties, all these applications are decided by common judgement. Wherever there is any difference ^{either} ~~heighter~~ ~~register~~ in documentary evidence or oral evidence reference would be made for the same differently. The applicants in application Nos.LC-2/294 to 344 of 1982 work on what are known as De-luxe and Rajadhami Expresses, the first having been introduced in the year 1953 while the second one on 13.5.1972. After having narrated the duties of each category separately in the respective applications, the common contentions in all these applications is that they are continuous workers under the Hours of Employment Regulations and are supposed to work ^{/in a day} 8 hours and 48 hours per week and that if the duty exceeds 48 hours per week, they are entitled to get overtime at double the normal rate of wages. Although such is the aversment in the application ^{in two weeks} the evidence speaks that upto 108 hours ^{in two weeks} which are statutory hours, the applicants get overtime at the rate 1½ times the normal rate while beyond 108 hours ^{in two weeks} the rates are double the normal rate. This is after 1.8.1974 when the limit was reduced from 108 hours to 96 hours. It is the case of the applicants that when they are working at the depot at the headquarters, they perform only 8 hours duty but when they are required to accompany the trains, it is alleged, no duty rosters have been provided for and that they have to perform 24 hours duty round the clock in the running trains as well as when it reaches the outstation destination. It is alleged that from the time they ^{take} ~~take~~ charge, they are required to work continuously without any rest and that no roster ^{neither} ~~heighter~~ in the train nor in the out-station have been provided for and that they ^{are} ~~are~~ relieved of their duties only when they returned to the headquarters after half-an-hour after the arrival of the train. The case of the applicants in application Nos.LC-2/294 to 344 is that a trip to Delhi in the case of Deluxe Train takes 64.30 hours in three days, a trip for ~~Arister~~ ^{Arister} takes 73.30 hours



in 4 days while the trip to Howrah takes 160.80 hours in 7 days.

It may be mentioned here that in the affidavit when the evidence was adduced the hours stated are slightly different. It is alleged that Delhi Trip takes 64.45 hours in 3 days, Amritsar takes 78.60 hours in 4 days while the trip to Howrah 160.45 hours in 7 days. Since the staff is also required to accompany the Rajadhani Express it is alleged that the trip to Delhi by this train required 43.45 hours in three days.

2. The applicants in application Nos.LC-2/151 to 1932 of 1932 serve on other trains known as Frontier Mail, Dehra Dun Express, Delhi Janata, Delux and Paschim Express, Jammu-Tawi Superfast. The time stated for these trains is Frontier Mail 61 hours in 4 days, Dehra Dun Express 106 hours in 6 days, Delhi Janata 89 hours in 4 days, Delux and Paschim Express 89 hours in 4 days, and Jammu-Tawi Superfast 62 hours in 3 days.

3. By the written statement filed in the first group whereby it is meant that application Nos.LC-2/294 to 344 of 1932, the opponents ^{contesting} ~~is/contested~~ the claim firstly on the ground it is not tenable under Section 33C(2) of the Act and secondly on the ground that it is stale and therefore time barred. It is further stated that records maintained by the opponent give the correct particulars of the applicants and would be produced. The fact that these applicants belong to continuous workers category under the Hours of Employment Regulations stands admitted but it is the case of the Railways that when they accompany the moving train they are governed by para.18(1) and 20 of the subsidiary instructions under the Hours of Employment Regulations. It is stated under those rules the staff who had to work partly and partly to travel on duty get full credit for the

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busy period and credit at the rate of 25% for the period for which there is little or no work while escorting the train when they are provided with travelling facilities. It is stated that by letter dated 7-5-1977 the Railway Board refused the ^{earlier} orders by which full credit for the time spent in travelling in computing their hours of employment is being given and that credit for ^{period} ~~the~~ prior to 7-5-1977 is admissible as per the provisions under para.18(ii) and 20 of the Subsidiary Instructions. ~~Under~~ The Railways are denying the contention that no resters are provided for and they are prepared to produce the duty chart on which reliance be placed. According to the Railways the applicants are working in gangs in turn and that they cannot be said to be constantly on duty for the entire period from signing on to signing off. The Opponent is also denying the version of the applicants that they are not provided with rest facility and it is their case that provisions is made in the power car compartment of the train. It is alleged that the applicants work on the rakes for the duration of the halt at outstation and these rakes remain in their charge and it is that when one gang works on the rakes the other takes rest in the compartment car-marked for them. The Railways are denying the allegation that no facilities are provided for at outstation destination. It is alleged lastly that since no representation was made at any time by the applicants before filing these applications the claim is premature and therefore untenable.

4. In the second group consisting of applications Nos.LC-2/151 to 152 of 1932 the Railways have also filed their written statement where the fact that the applicants belong to the category of continuous workers under the Hours of Employment Regulations is not disputed, but at the same time they are stated to be governed by para.18(ii) and 20 of the Subsidiary Instructions since they are provided with, according

to the Railways, travelling facility whereby the procedure for the calculation is stated to have been laid down. The Railways are denying that these workers are not provided with any rest facility and also denying that the fitters have to remain busy for the entire period from the time of signing on at Headquarters to the time of signing off on completion of return trip at Headquarters. It is alleged that they are required to be present half an hour prior to the departure of train and relieved half an hour after arrival at the headquarters. It is further alleged that every time two fitters are booked since the trips are long and they have to work in turn and according to their convenience and lastly it is alleged that ^{since} no claim was advanced at any time prior to filing of the applications the same is ~~remature~~ and therefore should not be entertained.

6. The evidence adduced consists of oral evidence in the first group is that of Shri R. S. Sidda on behalf of the applicants and that of Shri J. G. Sonavaria, Assistant Electrical Engineer for the Opponent. It may be conveniently mentioned here that in the case of Electrical Chargemen an attempt was made at the time of adducing oral evidence to take their case out of the definition of workmen thus trying to knock out the very base of the application when it was alleged in para. 9A of the affidavit of Shri Sonavaria that the classification of Electrical Chargemen is Supervisory and not continuous and therefore they are not at all entitled to claim any overtime. This contention however was never taken at any time in the pleadings, a reference to which is already made in detail and therefore the attempt to show that they are not governed by the Hours of Employment Regulations or that they cannot be treated as continuous must fail. In his affidavit Shri Sidda says that these applicants belong to the category of continuous workers entitling overtime under the Hours of Employment

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Regulations and ~~where~~ Railway Board's letter dated 11-6-1974 and
 whereunder
 2.5.1977/ as already stated the duty hours and the rates ^{are} prescribed
 for overtime. Similarly he has given time required by Deluxe Train
 for the trip to New Delhi, Amritsar and then to Howrah and similarly
 Rajadhani Expresses trip to New Delhi. The position of the staff as
 stated by the witness is that except in the case of Oilers, for Deluxe
 train it is alleged when it goes to Howrah, Delhi and Amritsar only
 one employee of each category namely, Electrical Chargemen, Elec.
 Fitter (HAC) Grade II, Electrical Fitter (HAC) Grade III, Electrical
 Fitter (P) Grade II, Electrical Fitter (P) Grade III, M.O.E. Grade II
 and M.O.E. Grade III ^{accompanies} and the strength of Oilers however according to
 him for all the trips is two. While referring to Rajadhani Express,
 it is alleged that the first 5 categories the number of each category
 is also one but two each from M.O.E. Grade II and M.O.E. Grade III
 accompany the said train. The witness then has referred to the duties
 to be performed while the train is in motion as well as when the train
 is at the outstation destination. He complains that when the sanctioned
 strength in Rajadhani Express as well as De-luxe Train, for Rajadhani
 it is 36, 32 for Howrah Rake, ^{each} 21 to Delhi Rake and Amritsar Rake, the
 number of employees in these categories booked never exceeds 9 for
 all these trips ~~in~~ both the trains. The witness has stated the
 hours of duty as follows:-

In Deluxe Rakes

Howrah Trip	- 150.45 hours in 7 days
Amritsar Trip	- 73.50 hours in 4 days
Delhi Trip	- 54.45 hours in 3 days
	73.50 hours in 4 days

In Rajdhani Rakes

Delhi Trip	- 46.45 hours in 3 days
	70.35 hours in 4 days"

I am told that the difference for Delhi trip in the cases of both these
 trains namely 3 days and 4 days is because these trains initially were

bi-weeklies but subsequently they now run 5 days in a week. The witness then refers to the absence of any rest facility as has been done in the case of Drivers, Guards, Conductors etc. and that they are required to remain with the rakes and to check the rakes and undertake any repairs necessary. He also refers to Railway Board's letters dated 12-1-1977 and 7-6-1977 whereby the staff of the mid-on-generator has been allowed full credit for such of the time spent in travelling. Shri Anchan, however, on behalf of the applicants informs that payment under the above two circulars is made only to some of the Chargemen and not to others.

6. In the cross-examination the witness admits that the Fitters who accompany the trains are required to work under the Chargemen and that the staff distribution regarding the work is done by the Chargemen. It is stated that each chargemen supervises the work of the staff placed under him in all probability the attempt seems to be to suggest that the chargemen are not governed by the Hours of Employment Regulations but as already pointed out such case was never made out in the written statement and I am further given to understand that treating them to be governed by the Hours of Employment Regulations the payment of overtime is being made to the Chargemen. The facts that they are performing supervisory duties, would not come to the help of the opponent.

7. The witness admits that there used to be 9 persons accompanying for a Delhi Trip and 15 in number when the train was going to Howrah. He then stated that occasionally two chargemen accompany the De-lux train but on other occasions according to him only one chargeman used to be incharge. He himself never travelled in Rajdhani Express and therefore he has no knowledge of the work of the said train. Neverthe-

less in the case of Fitters one each of grade I, II and III (RAC) used to accompany the De-lux train similarly electrical fitters (P) one each of grade No. I, II and III ~~and one M.O.E~~ and one M.O.E of Grade II and two M.O.Es of Grade III while in the case of Howrah trip there used to be 3 oilers. The witness says that as these trains vary there cannot be a duty list and the duties depended upon the nature of the equipment and the failures and in the absence of failures the work will be light but the staff ~~must remain vigilant~~ has to remain all along vigilant. The duties performed by oilers are then stated. The witness admits that he has seen the duty rosters whereby he meant the duty chart. The plea of the opponents as to be seen in the cross-examination of the witness and it is admitted seems to be that Rajdhani and De-lux trains each has got two generators each carrying two engines namely one pair is working while the other is kept ~~non-~~ ^{non-} working. He admits that the generators are supposed to be in good conditions. He admits in the year 1978-1979 they have got overtime on the basis that they are continuous workers and that while calculating the entire journey period was treated as on ~~journey~~ ^{duty} period. When the attention was drawn to the duty list produced by the opponent, he denied them to be the duty lists of either of De-lux or Rajdhani Expresses, at the same time he admits that the duties performed by the staff mentioned in the duty list and those sent by Rajdhani Express are the same barring the Pantry car work. He denied the suggestion that ^{for} Rajdhani and De-lux Trains, two teams of staff ^{are booked} / one team working and the other taking rest. He also denies that in the generating car there is enough space for taking rest. He also denies that at outstations only one team works and the other team takes rest and not both. A suggestion was tried to be made that when the train reaches the outstation it is none of the duties of this staff to look after into the maintenance but this again is a case

tried to be made newly.

8. An already stated the Railways have examined the Assistant Engineer Shri Sonawala who maintains that these employees work in two batches one not working and other not taking rest by rotation. He further says that these applicants are provided with rest facility in the power car compartment where ample provisions is made to take rest and that there are four berths in each power compartment. The case of the witness is that the work of these applicants is arranged in such a manner that at no point of time they are required to perform duties of more than the statutory hours and therefore according to him they are not entitled to any overtime. Though the suggestion in the cross-examination of Shri Mehta was that at the station the staff accompanying the train was not required to do any work, in para. 16 of the affidavit the witness of the Railways admits that it is not denied that at the destination they have to maintain the train for its return journey. Not only therefore it is to be discarded as vague case but also there is a specific admission on the part of the opponent witness. In the cross-examination Shri Sonawala admits that he never worked either in the Rajdhani or Delhi Expresses during the period in question, ^{and} he having been placed in charge of these employees only after 1980, he has no knowledge ^{whether} from 1-8-1974 the date on which the hours have been reduced to 96 hours in two weeks, any work beyond these hours is to be treated as overtime. When the attention of the witness was drawn to the G-1 chart it is stated that it was prepared in the year 1978 and that these witnesses had restored duty hours which were notified and displayed on the notice Board. He maintains that two gangs to accompany Rajdhani Express, each gang consists of one supervisor, highly skilled Diesel Mechanic, highly skilled

is the evidence of Shri P.C.Joshi, Assistant Electrical Engineer cited by the Opponent. The applicants here also reiterates that they belong to continuous category and from 1-8-1974 they are entitled to overtime wages in excess of 96 hours in two weeks and the rate is from 96 hours to 108 hours at $1\frac{1}{2}$ times the ordinary rate and beyond 108 hours at double the ordinary rate. The witness has given particulars of work to be performed by the Fitters, he says that they are required to report for duty one hour before the departure and in para.7 of the affidavit he has stated the hours for the trips taken by each train which are Frontier Mail 61 hours in four days, (2) Dehra Dun Express 105 hours in 6 days, Delhi Janata 89 hours in 4 days, (4) Deluxe express 89 hours in 4 days and (5) Janu-Tawi Superfast Express 62 hours in 3 days. It is stated that at the destination they are not provided with rest facility like Guards, Drivers etc. and that they cannot take rest because they are supposed to guard the Railway property like tools etc. and that they are required to stay either in the train or on the platform. It is also stated that on return back to Bombay Central they are relieved one hour after the arrival.

10. Shri P.C.Joshi however says that the reporting time before departure and after arrival is only $\frac{1}{2}$ hour each. He has described the duties of the Fitters at the same time says that rest facilities are provided for these staff in the train. According to the witness these applicants are governed under para.18(11) and 20 of the subsidiary instructions whereby they get full credit for such of the travelling time during which they are fairly busy and credit at the rate of 25% for the travelling time during which they have little or no work. In the case of Fitters however by letter dated 2-3-1974 issued by the Railway Board their case was taken out from these

paragraphs and it was laid down that these applicants are entitled to have full credit for the entire period from signing on to ~~sign~~ signing off from the date of the said letter. The witness maintains that these fitters when not on duty in rotation have rest facility and it is further stated that in the duty chart when the train is at the destination both the fitters have been shown as on 'off duty' for the duration of halt at the destination station since they are not required to perform any duty during the said period. Shri Joshi then says that the duties of these applicants are so arranged ^{are} that they/never required to exceed the statutory hours and therefore are not required to work overtime. Lastly it is alleged that at the destination Fitters are never at the disposal of the opponent.

11. Shri L.C. Sequera in his cross-examination admits that after ~~introduction~~ the introduction of other trains two fitters used to accompany each train. At the same time he says that some of the duties can be performed in the running trains and others while the train is stationary. He admits that when the trains are despatched they are thoroughly checked by the concerned staff. When the attention to para.5 of Shri Joshi's affidavit was drawn he says that except to the reference to the arrival and departure time which according to him is one hour and not $\frac{1}{2}$ hour as stated by the witness, the rest of the paragraph is correct. He denies that only one fitter works at a time and not both and he also denies that that one berth in 3 tier compartment is reserved for the fitters and says that if any ^{over} handing is there that is only on return back to Bombay Central. Regarding the claim he says that they have submitted overtime slips and they are with the Pay Bill Section.

12. Shri P.C. Joshi also admits that the applicants belong to

continuous workers category and further admits that the fitters when once booked on trains are only relieved when they return to headquarters, meaning thereby that at outstation there is no signing on and signing off which normally would have been there had these fitters been relieved at the outstation. He reiterates that out of the two fitters one fitter works at a time and then claims that the document at S.No.1 produced by the railways in fact is the duty roster and not chart. When the attention of witness was drawn to Memo. dated 8-9-1977 issued to both the fitters in the same case the explanation offered by the witness is that had the chargesheet been issued ^{to} only one, he could have denied the responsibility passing on the same on the colleague and says that the Memo. was not issued against both because both were working simultaneously. Shri Joshi admits that fitters are in charge of tools and stores and that their safety is to be looked after by them during the journey and also at the outstation. This negatives his own version that at the outstation the fitters cannot be said to be on duty and unless they are on duty there cannot be any responsibility for the same. He could not produce any document to indicate reservation of berth in the compartment and at the same time he denies the suggestion that taking rest in the general compartment is prohibited. He has no idea whether the Bay Bill Section is handling overtime claim made by the applicants.

13. So far as the written statement is concerned the first objection to the claim seems to be the alleged want of jurisdiction under Section 33C(2) of the Industrial Disputes Act. If there are circulars under which the hours of work are to be calculated and if calculated accordingly the claim of the applicants is to be rejected or granted as the case may be, nothing is left for the determination

determination of the right and if right exists, ~~and~~ what remains to be done is the implementation thereof. The objection therefore that that these applications are not entertainable under Section 33C(2) of the Act cannot carry any force.

14. It was then urged that the claim is barred by limitation or that because it has become stale and therefore it is not entertainable. So far as the plea of limitation is concerned it is well settled law that the applications under Section 33C(2) of the Act have not been prescribed with any period of limitation and ~~therefore~~ ^{when} the legislation has not laid down any such period, no limitation can be imposed for applying ^{to} the Court under the relevant provisions. If there is no bar of limitation, and if it is the duty of the Railways under the Hours of Employment Regulations to maintain the records for the purpose of determination of hours of work put in by such type of employees, merely because the workers have come late, the claim cannot be rejected on the ground that it has become stale. Another argument which was advanced was that since the employees have not approached the Railway authorities with their claim for overtime, the applications filed by them under Section 33C(2) of the Act are pre-mature. What we find ^{from} ~~is~~ the re-action of the Railways that they are not ^{opposing} ~~opposing~~ the claim on the ground that they want time for determination of the claim but they have come out with the plea ~~that~~ of non-eligibility of any such workmen to claim overtime ~~than~~ for the excess work. In the light of such defence therefore, the contention that the claim is pre-mature when in fact in pursuance of the remedy allowed by the Court the applicants have approached this Court, would ~~not~~ be without any substance. Moreover the witnesses of the applicants in their evidence have stated that they did prefer the

claim but when nothing was heard from the Railways they approached the authorities and in this connection they are supported by photo-stats copy of letter dated 12/13-6-1974 written by the Divisional Superintendent to the Senior Electrical Foreman whereby he has moved the said authority to expedite payment of overtime to the staff accompanying the deluxe and Rajdhani expresses. It is therefore not that these employees did not move the authorities but on the contrary having found no favourable reaction, they had no other option but to approach this Court.

15. In addition to the claim for overtime the applicants did also claim what is known as night duty allowance but in the course of the trial the said claim was given up in the sense that the applicants have decided to resort to another proceeding in case they are so advised. The night duty allowance therefore need not be determined nor the eligibility of the applicants to claim the same.

16. As already pointed out the fact that these applicants belong to the category of continuous workers is not disputed. Under Section 17(a) of the Indian Railways Act in chapter VIIA the employment of a Railway servant is said to be continuous except when it is excluded or has been declared to be essentially intermittent or intensive. Under Regulation 8 of the Hours of Employment Regulation we get a reference to continuous workers and ~~from~~ the subsidiary instruction 71A to 71 H also would be relevant for the determination of the right of the respective parties. It was tried to be urged on behalf of the applicants that when the provisions of the Railway Act or the Hours of Employment Regulations are statutory the subsidiary instructions issued by the Railway Board cannot have that force. Whether it has got statutory force or not, the right of the parties unless they are determined in any other manner by

the Court competent do so would be governed particularly in a proceeding under Section 33C(2) of the Act by these instructions and therefore all the calculations and determinations of the rights will have to be based on these instructions that too issued by the Railway Board. Under para.18(11) as well as para.20 we get a reference to hours of duty ^{of} ~~and~~ other Travelling staff that is other than Travelling Ticket Examiners etc. ^{and} para.20 refers to calculation of travelling time. So far as para.18(11) is concerned it speaks of staff travelling such as Travelling Van Checkers, Travelling Van Porters, Loco Van Clerks and Travelling Stores Delivery Staff who are ordinarily provided with travelling facilities and who are required to work only for a portion of the time spent in travelling including halts and whose work cannot be adjusted to a daily roster. The nature of duties described by the witnesses and also admitted by the opponent's witnesses would therefore exclude the operation of this part of the instructions and ~~therefore~~ ⁱⁿ ~~case~~ would be governed by para.20 which shows that with the diverse categories of staff who travel on duty and the wide variation in the organisation on Railways which makes condition of work of the same category of staff different from Railway to Railway for the purpose of affording credit for the time spent in travelling each case should be dealt with by Railway Administration to suit local conditions; ^{nevertheless} the governing principle ^{is laid down namely} ~~is~~ to allow credit in full for much of the time spent in travelling during which the staff concerned are expected to be fairly busy and for a fraction, say 25% of the time occupied in travelling when they do little or no working. It was tried to be urged on behalf of the applicants that there is no limit to fix 25% or as a fraction but unless a particular Railway, ^{viz.} the Western Railway under whom the applicants ~~work~~ are serving fixes the fraction

at

at the higher rate, the Board's letter will have to be implemented as it is and therefore in case the fraction^{is} to be considered, at least till the time the orders are passed by a particular railway, the same will have to be treated as laying down a limit of 25% only.

17. Before we turn to other parts one significant point to be borne in mind is that all these applicants whether they are Electrical Chargemen or whether they are Fitters before the train leaves the headquarters the evidence shows that they are thoroughly checked particularly ~~when~~ the prestigious trains like the Rajdhani Express and Delux Express, and then alone they are despatched for journey. I am stating these circumstances to indicate that though these staff accompany the train normally they cannot be expected to do repairs etc. but only the duties what ~~is~~^{are} known as maintenance and for ~~the~~ determining whether they are expected to work through out the travelling time or not, this factor is bound to play important role. To say that they are on duty ~~at one time~~^{or}, from the time of departure till the arrival back to the headquarters they shall be deemed to be on duty is ~~another~~^{one} thing and to be constantly working for 24 hours as claimed by the applicants is another thing. The Railways Board's instructions particularly para. 20 takes care of such eventuality when credit in full shall be allowed during which time the staff is expected to be fairly busy and for a fraction of 25% of the time occupied in accompanying when they do little or no work.

18. A controversy has arisen because of the conflict in evidence namely whether these applicants work in more than one gang or only one gang used to accompany each train. The attempt on the part of the Railways is to indicate that each category of workers belonging

to the said category are sent in pairs and one gang takes rest while the other one was working. The Railways have produced for the said purpose duty chart which according to them is also duty roster but the record shows the date of chart produced relates to the year 1978 and not before that. There might be reasons for this ^{viz.} there must not be division of work as tried to be contended or that the railway must not be maintaining the duty chart. If there was division of work it was expected to have duty chart and the same was forthcoming ^{but} and no such charter or roster for the earlier period produced which only indicates that what is claimed by the applicants ^{that} in the past each type of worker ^{was} working ^{singly} and without any aid or companion must be true.

However here again in the light of the particular circumstances only that what was expected of these workmen except in the case of those who are expected to work on the generators the duties of these men were comparatively light namely the duty of maintenance and of any repair, while the train was running and while the train is at the destination. In view of this for the reasons already stated accepting the claim of the applicants that they were not working during it would not mean that throughout the journey whether out-going ^{or} ~~returning~~ ^{when} at the destination, they were fairly busy. There must be gaps of considerable length of time when these workers are not called upon to do any work or even if there ^{be any} ~~was~~ urgent work.

In the case of Electrical Fitters from 2-3-1974 only orders were issued by the Railway Board that they are entitled to credit for the entire period of travelling in other words same was segregated from the operation of para. 20 of the Railway instructions. Similarly the other staff is also brought ^{on par} with the Electrical Fitters by the Railway Board's letter dated

7-5-1977 from which time they are entitled to full credit for the entire travelling time. Consequently when they are governed by para. 20 till 20-5-1977 in case of staff other than Electrical Fitters and till 2-3-1974 in the case of Electrical Fitters, The calculation would be for 8 hours plus 25% of the remaining 16 hours spent in travelling.

21. At the outstation as stated by Shri Siddu and Sequera the staff has to look after the maintenance of the generators etc. so as to keep them in fit condition for the return journey and therefore they must be stated to be fairly busy during the period when the rakes are at the outstation. Even Shri Sonavaria in the cross-examination categorically stated "It is not denied that at destination they have to maintain the rakes for its return journey."

22. Initially the hours of duty were 108 in two weeks but subsequently they were reduced to 96 hours in two weeks which fact stands admitted. However, while determining the question of overtime the Railway Board by their letter dated 12-10-1976 have extended the directions contained in the letter dated 11-6-1974 to the staff governed by para. 20 of the Subsidiary Instructions whereby they have decided that the ^{principle} ~~number~~ of 108 rostered hours in two weeks period applicable to running staff in terms of letter dated 14-3-1976 should be also extended to such other staff. It is true that this letter cannot have the intention of retrospective effect and therefore till 12-10-1976 the hours for the purpose of overtime would be 96 hours ^{plus} ~~only~~ one hour for taking over and one hour for handing over per trip. An attempt was made to suggest that during that period at the outstation there used to be handing over and taking over but in the light of the admission of Shri Sonavaria and in the light of the evidence of applicants' witnesses who have categorically stated

to be in attendance even at the outstation that statement cannot be accepted and therefore the hours per trip only would be the time to be included in the duty hours for calculation of overtime. In other words while calculating the overtime before 12-10-1976, 96 plus 2 hours will be considered while after the said date it would be 104 hours.

23. About the rate there is no controversy in the sense that upto 1-8-19-74 it was consistently $1\frac{1}{2}$ times in excess of 108 hours and after 1-8-1974 when the hours were reduced to 96 hours the rate for excess work upto statutory limit of 108^{hours} is $1\frac{1}{2}$ times while for any work done in excess thereof the rate is double the normal rate.

24. Since the whole records ^{are} with the Railways they shall calculate the overtime in the case of each applicant in the light of the above observations and effect payment of any amount which may be due to the respective applicants within a period of three months. In case the payment remained to be made even though there may not be any controversy the amount so calculated would carry future interest at the rate of 6% per annum ~~from the date of application to 2-3-1974~~ from the date of application. From 2-3-1974 in the case of Electrical Fitters and from 7-5-1974 in the case of other applicants, as per the respective Board's letters the applicants are entitled to full credit for the entire travelling time and their cases would be governed by these letters from the respective dates.

(M. A. Deshpande)
Presiding Officer
Central Govt. Labour Court No. 2,
Bombay

MR/3/6/33