

**Government of India/ Bharat Sarkar
Ministry Of Labour & Employment/ Shram Evam Rojgar Mantralay**

Before the appellate authority Shri Chandra Prakash Joint Secretary in the Ministry Of Labour & Employment under rule 4(2) of THE RAILWAY SERVENTS (HOURS OF WORK AND PERIOD OF REST) RULES, 2005 (Notification no.s.o. 3843 dated 12, December 2011 Published in gazette of India dated December 31, 2011).

In the matter of an appeal filed by the General Manager, Southern Railway, Chennai, against the decision of Regional Labour Commissioner(C), Chennai regarding the reclassification of Loco Pilots

Appeal No.Z-20026/13/2012-CLS-I

The General Manager
S. Railway, Chennai

Appellants

V E R S U S

The Secretary,
All India Loco Running Staff Association,
C/o R. Soundrapandian, 16, Sengow Nagar,
Madurai-18.

Non-Appellants

The case was taken up for hearing on 31.1.2013.
Present:-

- (1) Shri S.Shivanathan, APO, Madurai
- (2) Shri S.Kamalakannan, Sr. Loco Inspector, Madurai
- (3) Shri N.V.R. Radhakrishnan, Staff of Welfare Inspector, Madurai

-For Appellants

&

- (1) Shri M.Kumar, Divisional President, Madurai, AILRSA
- (2) Shri V.Balachandran, Div. Secretary, Chennai Division, AILRSA
- (3) Shri R. Soundrapandian, Authorised Person
- (4) Shri S.Bharathdasan, Asstt. Secretary, Chennai Div. AILRSA
- (5) Shri A.H.Siva Ganesh, Committee Member, Tiruvottiyur, AILRSA

-For Non-Appellants

Choral

*Read on
19.03.2013
D. S. S.*

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ORDER

The appeal has been filed by General Manager, Southern Railway against the judgement of RLC(C), Chennai dated 26.12.2011.

The officers of CIRM namely Regional Labour Commissioner (C), Asstt. Labour Commissioner(C) and Labour Enforcement Officers(C) are all supervisors of Railway labour appointed under Rule 14 of the Railway Servant (Hours of Work and Period of Rest) Rules, 2005 and under Section 135 have duties "to inspect railways in order to determine whether the provisions of this Chapter or of the rules made thereunder are duly observed.....". They shall be deemed to be a Commissioner for the purposes of Sections 7 and 9. They may Under Section 7(a) "enter upon and inspect any railway or any rolling stock used thereon;"

Under Section 9, railway administration is duty bound to "afford" to the Commissioner all reasonable facilities for the discharge of the duties or for the exercise of the powers imposed or conferred on him by or under this Act.

In this particular case, the RLC(C), Chennai directed the LEO(C), Madurai to conduct job analysis who in turn requested the railway administration to arrange for job analysis but the appellants declined the

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permission whereas, as per the Railway Labour Tribunal Award quoted in the judgement of RLC(C), Chennai at page No. 5 review of classification is a continuous process and the job analysis should have been done by the railway of their own. But even the directions of RLC(C) and LEO(C) in this regard were not complied with violating Section 9 as quoted above.

The Railway Servants (Hours of Work and Period of Rest) Rules, 2005 under Rule 7 prescribes:-

7. Criteria for determining classification of railway servants

- (1) Continuous: All employment of railway servants except those excluded from the purview of the Hours of Employment Regulations are assumed to be "continuous". Thereafter, on the basis of factual job analysis the employment may be classified either as "intensive" or "essentially intermittent", as the case may be.
- (2) Intensive: The two important factors in declaring an employment as "intensive" under clause (d), of Section 130 of the Act are:-
 - (i) Strenuous nature of the work tending to cause mental or physical strain; and
 - (ii) Continuous application to such work with little or no periods of relaxation.

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Explanation I: The term "continued concentration" in clause (d) of Section 130 is intended to convey that the attention demanded of the railway servant concerned for a particular nature of job should be exclusive not to allow any other thought or idea to enter the mind and must be of such nature as to cause strain (physical or mental or both) upon the railway servant concerned as a result of continuous application to such work over certain period without reasonable periods of respite. Thus, having regard to the entire period of duty and nature of work, the prescribed authority shall, before declaring any employment as "intensive", satisfy itself that the above factors are present in the job concerned. In other words, the prescribed authority shall consider whether the job is of such a character that it demands continued concentration without any reasonable periods of relaxation.

Explanation II: Factor (ii) should be considered to have been satisfied where the periods of rest, inaction or relaxation do not aggregate 6 hours or more in a cycle of 24 hours or one hour or more in a shift of 8 hours.

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The Railways Act, 1989 – Chapter XIV Section 130 (d):-

“the employment of a railway servant is said to be “intensive” when it has been declared to be so by the prescribed authority on the ground that it is of strenuous nature involving continued concentration or had manual labour with little or no period of relaxation.”

The Railway Board has constituted a High Powered Committee vide their Order No. ERB-1/2011/18 dated 25.5.2011 to look into the matter the tenure of the Committee was one year but the recommendations have not yet been submitted.

The Railway Board vide their letter No. 2004/M(L)/466/7101 dated 14.6.2012 has also recommended in Para E under misc. suggestions at point No. 3 **“the maximum duty hours of mail/express drivers should be reduced to 6 hours as they encounter one signal every minute on an average during their run”**

3. **Prescribed authority to classify the employment of railway servant**

- (1) The power to declare the employment of railway servants as “intensive” or “essentially intermittent” within the meaning of section 130 shall vest in the Head of the Railway Administrations: *Chal*

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PROVIDED that the Head of the Railway Administration may, in his discretion, delegate the power vested in him under this sub-rule to the Chief Personnel Officer:

PROVIDED FURTHER that during the period of emergency such as flood, accident, the power vested in the competent authority can be exercised by an officer not below the rank of senior scale.

Due to increase in the speed and automation in the loco engines like VCD(Vigilance Control Device), the pilot have to perform 8 operations in every two minutes, otherwise the engine may come to an automatic halt. This puts the loco pilots on a continuous action period and fulfills the requirements “....does not allow any other thought or idea to enter the mind and must be of such nature as to cause strain (physical or mental or both) upon the railway servant concerned as a result of continuous application to such work over certain period without reasonable periods of respite.”

Strictly speaking the job analysis done by the LEO(C) may not be fulfilling all the requirements of factual job analysis but in the given circumstances the exercise can be categorized as job analysis by rough assessment method as mentioned in Section 5 of the subsidiary instructions issued by the Indian Railways. This gives a clear idea of the nature of job and justifies change of classification to intensive. Moreover, recommendation of the Railway Board conclusively proves this justification. Pendency of a High Power Committee's recommendations cannot be taken to be a ground for withholding the quasi judicial functions and for not granting justice to the respondents.



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RLC(C), Chennai has already dealt with other points in his judgement and I find no merit in the appeal for interfering.

I, therefore, dismiss the Appeal and uphold the judgement of RLC(C), Chennai.

Given under my hand and seal today the 18.2.2013.

Chandra
(Chandra Prakash)
Joint Secretary
Ministry of Labour & Employment
And
Appellate Authority

TIME BOUND
BY SPEED POST

F. No. Z-20026/13/2010-CLS.I
Government of India / Bharat Sarkar
Ministry of Labour & Employment / Shram Evam Rojgar Mantralaya

Shram Shakti Bhawan, Rafi Marg
New Delhi dated the 5th March, 2013

To,

1. The General Manager, Southern Railway, Chennai
2. Divisional Railway Manager, Madurai Division, Southern Railway, Madurai.
3. The Secretary (Estt), railway Board, New Delhi.
4. Chief Personnel Officer/ Industrial Relations for General Manager, Headquarters Office, Personnel Branch, Southern Railway, Chennai-600003
5. The Secretary, All Indian Loco Running Staff Association, C/o- R. Soundrapandian, 16, Sengow Nagar, Madurai-18

Subject: Appeal preferred under Rule 4 (2) of the Railway Servants (Hours of Work and Period of Rest), Rules, 2005 against order of RLC(C) Chennai vide his Order No. M.41/1/HOER/2011-B2 dated 26/12/2011-reg.

Sir,

I am directed to forward herewith the Order passed by the Appellate Authority, Ministry of Labour & Employment under Railways Servants, (HOURS OF WORK AND PERIOD OF REST), RULES, 2005.

Kindly acknowledge the receipt.

Encl; As above



(D. S Rawat)
Section Officer
Ministry of Labour & Employment(CLS. Section)
Tel. No. 23473327

Copy to

Dy. CLC(C)/ RLC(C), Chennai may ensure that the copy of the Order is delivered to all the concerned parties. A confirmation in this regard may be sent to this Ministry.