

Award No. 4481
Docket No. 4437
2-CMStP&P-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, unjustly deducted and denied full payment for extra services performed on September 23, 1961, a standby day of Trolley Linemen W. E. McConkey and D. J. Witzel in the amount of \$22.53 for Trolley Lineman W. E. McConkey and \$21.09 for Trolley Lineman D. J. Witzel.
2. Trolley Linemen W. E. McConkey and D. J. Witzel, hereinafter referred to as the Claimants, were required to perform additional service on their standby day, not comprehended or compensated for within their rate structure of their monthly rate of pay.
3. The Claimants state the only service required of them on their standby days is to respond to emergency calls to repair trolley and highlines in cases when the trolley and highlines are disrupted by storms, slides, fire and train wrecks.
4. The employees further contend that the services performed on September 23, 1961 was ordinary maintenance or construction work and in accordance with the provisions of the current schedule Rule No. 29 of the Electrical Workers' Agreement, effective September 1, 1949, such services would not be required of them on their standby days.
5. The employees further contend that when such ordinary maintenance or construction work is required of them on their standby days, the Carrier is then subject to pay them additional compensation to their monthly rate of pay at the overtime rate for and, accordingly, the Carrier be ordered to compensate the Claimants the amounts deducted.

6. The employees further contend that the payment for the sixth day of the work week recognized as their standby day, is to compensate them for any and all emergency service performed after their normal working hours during the work week, Saturdays included, for which no additional compensation is paid to their monthly rate of pay. They must also standby after each work day period or inform their supervisor as to where they may be reached in order to respond for emergency calls.

EMPLOYEES' STATEMENT OF FACTS: Trolley Linemen W. E. McConkey and D. J. Witzel, hereinafter referred to as the claimants, are employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called the carrier, as monthly rated trolley linemen five days per week with Saturday as a standby day.

During a period both before and after September 23, 1961 the carrier was engaged in a construction project of lowering the tracks through tunnels located on Lines West in its electrified main line territory. The track forces (maintenance of way) were engaged in the performance of that work and in connection therewith and during this period of construction the claimants were also engaged in performing the work on the trolley line, constructing it so that it was properly located in relation to the road bed and rails.

On Saturday, September 23, 1961, which is the claimant's standby day, they, the claimants, were instructed to continue their work on this construction project, and they worked ten hours on that day.

The carrier, in accordance with the agreement and understanding, paid the claimants for ten hours at time and one-half for working on construction work on that day, but subsequently deducted wages from their salary amounting to that claimed in the employees' statement of claim.

A copy of the general foreman's letter directed to Claimant Witzel notifying him of the deduction, similar letter was sent Claimant McConkey.

Prior to the occurrence of this dispute, such monthly rated employees received time and one-half, in addition to their monthly rate, for performing such work as is here involved when such work was performed on their standby days and was the subject of discussion and an understanding was had with Mr. A. G. Britzius, assistant to general manager, who was the highest officer of the carrier authorized to handle disputes concerning trolley linemen. (lines west.)

The claim was filed and handled in accordance with the agreement for the amount deducted and was appealed up to and including Mr. S. W. Amour, Assistant to Vice President, as shown by a copy of the general chairman's letter. Mr. Amour also declined to settle the case, as shown by a copy of his letter.

The agreement, effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that based upon the foregoing statement of facts and of the aforementioned agreement, particularly Rule 29, reading:

tary of the Second Division, National Railroad Adjustment Board). So as to not unduly burden your board, the carrier attempted to persuade the employees to progress only one of the five cases to your board with the understanding that the remaining four would be held in abeyance, to be disposed of on the basis of the award rendered in the one case progressed to your board; however, for some unexplained reason the employees would not enter into such an agreement with the carrier. The carrier mentions this so that your board will understand that it is through no fault of the carrier that your board is now burdened with five identical cases, instead of only one.

It is the carrier's position that there is absolutely no basis for the instant claim and we respectfully request that it be denied.

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 waived right of appearance at hearing thereon.

The resolution of these claims rests upon the construction which is to be given to Rule 29 of the Agreement between the parties, which in its pertinent part, states:

"Employees regularly assigned to perform road work on a monthly basis shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to other employees covered by this agreement shall apply to service on such assigned rest days. Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week. * * *."

The Division is of the opinion that the words "ordinary maintenance or construction work * * * shall not be required on the sixth day of the work week" must have been intended by the parties to the agreement to have some meaning or significance, or they would not have inserted them in the Rule. The canons of construction require that the words which are the subject of interpretation be regarded as meaningful, rather than meaningless. It appears to the Division that the construction of these words which the Carrier is suggesting, renders them a nullity and as mere surplusage.

The Division finds it a more logical and reasonable construction to hold that the Rule means that regular employees paid on a monthly basis are required in order to earn that monthly rate, among other things, to standby and be available to perform emergency and extraordinary work on the sixth day of the work week, but that the monthly rate does not comprehend work which is clearly excluded by the very words of the Rule.

The Division further finds in the event that such proscribed work is performed on the sixth work day, and the Carrier has conceded in these claims that the work performed on the sixth work day was ordinary maintenance work, that the employees in question are entitled to receive, in addition to their monthly stipend, compensation at the pro rata rate for all the time worked.

Although the claimants have petitioned for compensation at the rate of time and a half, the Division has consistently denied premium pay for work on the sixth day in the absence of an express provision in the agreement providing same, and has awarded only pro rata compensation which is awarded here.

AWARD

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.