

Award No. 258

Docket No. 274

2-Va-EW-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Electrical Workers)**

VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Turbine and switchboard operators, employed by the Virginian Railway Company in its power plant at Narrows, Virginia, should be paid time and one-half for all service performed on Sundays and holidays. They should be allowed time and one-half for all time worked beyond eight hour shifts and they should also be given one hour each week for checking in and out on their own time. These benefits are provided by the present agreement now in effect on the Virginian. Rules therein covering these claims are not being observed by the management. Effective date of award should be on and after August 23, 1935, which was the date upon which Judge Way gave decision designating the Railway Employees' Department as the duly authorized representative of the employees named herein.

EMPLOYEES' STATEMENT OF FACTS: Above named employees are not being paid time and one-half for service performed on Sundays and holidays, but are compelled to work said days for straight time. They are not being allowed time and one-half until after their tenth hour of continuous service and they are not allowed their one hour each week for checking in and out on their own time.

POSITION OF EMPLOYEES: We contend that under the present agreement in effect on the Virginian since November 15, 1922, entitled "Agreement between the Virginian Railway Company and the Employees of the Mechanical Department," our claims should be allowed by the following rules therein:

Rule 4, Page 5, Item (b). "Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half."

This rule clearly provides that employees required to work on Sundays and the above mentioned holidays will receive time and one-half for such service.

Rule 4, Page 5, Item (a) of above mentioned agreement provides:

"All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half***"

ployes on other railroads operating power plants similar to our plant at Narrows, on which such employes are rated the same as they are at Narrows, and which have included "high tension power house operators" in their classification of electricians.

(C) Period covered by the claims:

The first claim made in this case was February 5, 1938, and the carrier contends that there is no basis for the claim that the "effective date of award should be on and after August 23rd, 1935, the date upon which Judge Way gave decision designating the Railway Employees' Department as the duly authorized representative of the employes herein named." The United States District Court for the Eastern District of Virginia, in the case of System Federation No. 40, Railway Employees' Department of the American Federation of Labor, et al., against the Virginian Railway Company, on August 23, 1935, entered its final decree based upon the opinion and decision of the court in said case filed July 24, 1935, reported in 11 F. Supp. 621, to which reference is here made for the text of said opinion and decision. It is submitted that said suit was not brought for the purpose of determining, nor did it attempt to decide whether turbine and switchboard operators were members of the mechanical department of the carrier, nor that such employes came within any classification for the purpose of rates of pay, and that the decision in said case has no bearing on the questions here presented.

For the foregoing reasons, the carrier respectfully requests that the claim of the employes be dismissed.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute waived right of appearance at hearing thereon.

System Federation No. 40, Railway Employees' Department, A. F. of L., now represents the employes in the mechanical crafts of the Virginian Railway Company.

The existing agreement between the Virginian Railway and the employes of its mechanical department must be recognized as still in force and until through negotiation any changes are made.

The claim in the instant dispute is in fact a claim for recognition of the turbine and switchboard operators as being part and parcel of the mechanical department. It is conceded by the carrier that the work performed by the employes involved "is not different from the work performed by similar employes on other railroads operating power plants similar to the plant at Narrows;" therefore, it follows that the turbine and switchboard operators must be recognized as part of the mechanical department.

Since it is recognized that turbine and switchboard operators at Narrows power plant come within the scope of the mechanical department forces, it follows that these employes are entitled to time and one-half for all time worked beyond the daily bulletined hours, to premium time for service performed on Sundays and holidays, and to one hour allowance each week for checking in and out on their own time, as provided for in the existing rules of agreement.

The Second Division cannot find adequate basis on which to agree that the effective date of the following decision should be as of August 23, 1935.

Because of the condition and circumstances surrounding this dispute award is rendered without allowance of any alleged monetary loss.

AWARD

Claim of employes sustained to the effect that turbine and switchboard operators in the Narrows, Virginia, plant come under the scope of the agreement between the parties, and effective from this date payment for time worked will be allowed accordingly.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of September, 1938.