

Award No. 1223

Docket No. 1135

2-Erie-MA-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (MACHINISTS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Machinist Pearl McWilliams is entitled to be compensated in the amount of double time or for two additional hours at his applicable pro rata rate for the services which he rendered from 11 P. M., July 24, 1946, to 3 A. M., on July 25, 1946, under the current agreement.

EMPLOYEES' STATEMENT OF FACTS: At Marion, Ohio, the carrier employed Pearl McWilliams, hereinafter referred to as the claimant, as a Machinist during the hours from 7 A. M. to 3 P. M. On July 24, 1946, this claimant worked his regular hours from 7 A. M. to 12 Noon, at which time he was assigned to ride Engine No. 2930 to Kent, Ohio, whereat he arrived at 6 P. M. The claimant there waited to deadhead back on the first available train from 6 P. M., to 11:30 P. M. He departed on Train No. 1, for Marion, Ohio, arriving there at 3 A. M., on July 25, 1946.

This claimant was on duty from 7 A. M., July 24, to 3 A. M., July 25, 1946, a total of twenty consecutive hours, for which he was paid straight time for eight hours and time and one half for twelve hours. Nevertheless, the claimant believed that he was entitled to be paid straight time from 7 A. M. to 3 P. M., eight hours, time and one half from 3 P. M. to 11 P. M., eight hours, and double time from 11 P. M., July 24th, to 3 A. M., July 25, four hours.

The agreement effective as to rates of pay, July 1, 1942, and effective as to rules, August 1, 1942, is controlling.

POSITION OF EMPLOYES: It is submitted that this claimant was assigned to and did perform emergency work, within the intent and application of the current collective bargaining agreement, and accordingly he was entitled to be compensated therefor in accordance with the applicable provisions thereof.

The service which this claimant performed is provided for in Rule 8, and it was subject to be paid for under the provisions of Rule 5, in pertinent part reading:

"(a) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis

"5(e) Employees will be allowed time and one-half on minute basis for services performed continuously in advance of the regular working period with a minimum of one (1) hour at straight time rate for forty (40) minutes or less, the advance period to be not more than one (1) hour.

"5(f) For all time **worked** continuously in excess of sixteen (16) hours, double time will be allowed.

"5(g) When employees work overtime they shall not be laid off during the regular working hours to equalize time.

"5(h) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.

"8(a) Employees sent out on the road away from home point for emergency work will be paid from the time required to report at their home station until their return, for all time working, waiting and traveling, in accordance with the practice at home station.

If, during the time on the road, employees are **relieved to rest** for five (5) or more hours, such relief period will not be paid for.

"8(b) Where meals and lodging are not provided by the Railroad, actual necessary expenses will be allowed.

"8(c) Employees will receive all allowances for expenses as soon as possible after statement is rendered. Employees will be called as nearly as possible one hour before leaving time and their return will deliver tools at point designated.

"8(d) Wrecking service employees will be paid under this and Rule 5."

In the course of the negotiations which resulted in the adoption of the foregoing rules, it was understood between the parties that Rule 5(f) was to be interpreted and construed as was Rule 5(b) of the Agreement of May 1, 1929, to the effect that double time would be paid only for hours worked in excess of sixteen hours of continuous **actual work** and waiting or traveling time was not to be comprehended in the sixteen hours.

We feel that this is an attempt on the part of the Federation to extend the scope of the rules as negotiated and, therefore, the claim should be denied because McWilliams did not actually work sixteen continuous hours. He had five hours and forty-three minutes of rest in the twenty-hour period and, in addition thereto, three hours and thirty minutes of riding time in a passenger coach all without any responsibility.

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 were given due notice of hearing thereon.

Considering the application of Rule 8, together with the provisions of Rule 5, it must be held that although Rule 5 (f) reads "worked" and not "service" as per the other paragraphs of that rule, the rule's reference to pay as per home station could be construed to mean the "pay practice" for a day, such as eight hours straight time, eight hours time and one half, eight hours double time.

If the employe here involved is not to be considered "working" while he was waiting or traveling, there is no rule to regulate the payment to be made to him, no special rule to govern payments for waiting time and traveling time.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division.

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of January, 1948.