

**Award No. 1258**

**Docket No. 1165**

**2-Erie-FT-'48**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (Federated Trades)**

**ERIE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That Machinist Ernest Lynch was improperly compensated for his services from 7 A. M. to 3 P. M. on Friday, August 9, 1946, under the current collective agreement, and that accordingly the carrier be ordered to additionally compensate him for said service at the time and one-half rate.

**EMPLOYEE'S STATEMENT OF FACTS:** At Buffalo, New York, the carrier maintains in the roundhouse service 56 hours per week, and a force of machinists to protect such service on the basis of 6-day assignments of 8 hours each, from 7 A. M. to 3 P. M., 3 P. M. to 11 P. M. and 11 P. M. to 7 A.M.

Machinist Ernest Lynch, hereinafter referred to as the claimant, was assigned by bulletin to work from 7 A. M. to 3 P. M. on Sunday, August 4; Monday, August 5; Tuesday, August 6; Wednesday, August 7; Thursday, August 8; day off Friday, August 9, and again on duty Saturday, August 10, 1946, 6 days of 8 hours each, or a total of 48 hours during that week which is affirmed by copy of the list, submitted, of assignments on each shift, identified as Exhibit A.

The Claimant, however, was assigned or required to work on his aforesaid day off, Friday, August 9, from 7 A. M. to 3 P. M., for which he claimed the time and one-half rate, but the carrier has declined to pay him only the straight-time rate therefor.

The collective agreement, effective as to the rates of pay July 1, 1942, and effective as to rules August 1, 1942, as amended June 1, 1945, is controlling.

**POSITION OF EMPLOYEE:** It is submitted that this claimant was assigned to and did work on Friday, August 9, 1946, his assigned day off, as stipulated in Exhibit A, and accordingly he was entitled to be compensated therefor at the rate of time and one-half, under the provisions of revised Rule 4 (a), reading—

“All service outside of regularly bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be otherwise provided in the rules.”

3. The weekly schedule of release days posted by the master mechanic at Buffalo is not "regularly bulletined hours" as contemplated by Rule 4(a) of the Agreement August 1, 1942, amended June 1, 1945.
4. The status of Lynch on August 9, 1946, was no different than if the carrier had on August 8 posted a notice that Lynch was to be absent to attend court on August 9, and then later cancelled the notice so that Lynch did work his normal hours. Surely no one would claim that Lynch in such circumstances was entitled to extra penalty pay.
5. The basic trouble was shortage of men account of the large number that the master mechanic had authorized to take their vacation period in the first two weeks of August. Out of 40 machinists, 7 were on vacation and then others had to be used because of replacement at Buffalo Creek and for the foreman; while still others laid off without notice all of which compelled the master mechanic to ask men to work on their release day. Under the law, master mechanic could not require—but an employe does have the right to agree to work. When employe does so he is not entitled to be paid a penalty as there is no rule to support.

**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.

It does not appear that claimant's regular assignment was in any way changed by what he did or was required to do. When necessity required the carrier used a certain number of employes to work on Sundays who had regular week day assignments. This it had a right to do. Under the agreement the Sunday work is divided among the employes available. See Rule 1(c). It is paid for at the rate of time and one-half. See Rule 4(b). Thereupon, in order to comply with the State statute, the carrier directed the employes so used on Sundays not to work their assignments on one of the week days. This it had a right to do under Rule 1(c). It did so by posting a weekly notice advising those men working on Sunday what day during the week they were to take off. This did not in any way change the regular week day assignment but, in effect, blanked one of the days thereof. This was authorized under the rules of the agreement. See Rule 1(c). It was authorized in order that the carrier could meet the statutory requirement that every person employed be allowed twenty-four consecutive hours off for rest in every calendar week. Since the day so assigned to meet the statutory requirement remained one of the regular days of the assignment there is no provision in the agreement which entitles the employe to receive other than the regular rate thereof if he actually works his assigned hours on that day.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of the Second Division

ATTEST: J. L. Mindling  
Secretary

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