Award No. 1563
Docket No. 1466
2-TRRAStL-MA-'52

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.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 25, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Machinist W. A. Sullivan was improperly compensated at the straight time rate for service performed on November 18 and 19, 1950.

2. That accordingly the carrier be ordered to additionally compensate the aforementioned machinist the difference between straight time and overtime rates for the aforesaid dates.

EMPLOYES' STATEMENT OF FACTS: Machinist W. A. Sullivan, hereinafter referred to as the claimant, was regularly assigned at Brooklyn shops, five days per week, Monday through Friday with rest days Saturday and Sunday. The claimant completed his tour of duty of forty hours at the regular quitting time Friday afternoon, November 17, 1950.

Following completion of shift Friday, November 17, the foreman instructed the claimant to report for duty the following day, Saturday, November 18, at the 14th Street engine house, a different seniority point, for the purpose of filling a temporary vacancy of a machinist who had reported off due to illness. The claimant reported as directed and worked there Saturday, and Sunday, November 18 and 19 for which time and one-half was claimed, but to date he was only compensated at the straight time rate. In addition to working the two days on this temporary vacancy, the claimant also worked Monday, Tuesday and Wednesday, November 20, 21 and 22, a total of ten consecutive days at the straight time rate.

On Wednesday, November 22, the machinist whose vacancy the claimant had been filling, reported ready for duty. Consequently, the claimant did, on Thursday, November 23, resume his duties on his regularly assigned position at Brooklyn shops.

The agreement effective April 1, 1945, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the claimant with a work week assignment of Monday through Friday, with rest days of Saturday and Sunday at Brooklyn shops which is his seniority or home point,

puting the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.

(b) **Work on Unassigned Days**—Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe.

(c) Service performed by employes on their assigned rest days and on 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 falls on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half."

No change was made in Rule 10.

POSITION OF CARRIER: During the handling on the property the general chairman contended that inasmuch as the claimant worked more than five days during the workweek of his regular job that he was entitled to the punitive rate under Rule 6 for the sixth and seventh days of that job regardless of the fact that he was then occupying another one. He denied that Rule 10 has any application other than to permit the moving of an employe from one assignment to another and omitted entirely any reference to the last paragraph of Rule 1 (e) which provides that days of rest apply to positions and not employes. In other words, one particular rule is being advanced to support their claim without regard to other applicable rules. Each rule must be considered in its relation to the other.

Rule 10 provides that employes notified in advance of their regular starting time will report at other points on the property when necessary to fill temporary vacancies or to take care of an excess amount of work and that they will work the prevailing shift hours, if any, at the point to which temporarily assigned. In other words, by mutual agreement incorporated in the rule an employe may be moved from one assignment to another.

Rule 1 (e), to which the organization makes no reference, provides that rest days apply to positions, not to employes. That means that any one working any position under any circumstances must take the rest days assigned to the position.

Rule 6 (a) provides that "Employes worked more than five days in a workweek shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their workweeks."

We have shown in the preceding paragraphs that the rules provide that an employe may be moved from one assignment to another; that he will work the prevailing shift hours, if any, when so moved; and that he will assume the rest days of the position to which moved.

As previously stated, all applicable rules must be considered in deciding the merits of a claim (this Board has repeatedly held that an agreement must properly be construed as a whole) and, when that is done in the instant case, it shows indubitably that proper payment has been made and the claim should 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 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.

The machinists of System Federation No. 25 contend carrier improperly compensated Machinist W. A. Sullivan for services performed on November 18, 1950 and November 19, 1950. It asks that he be paid at the overtime rate in place of pro rata, the basis on which he was paid.

Claimant was regularly assigned to a position at the carrier's Brooklyn shops, Brooklyn, Illinois. His assignment was Monday through Friday with Saturday and Sunday as his rest days.

A temporary vacancy occurred on a position at carrier's 14th Street shops, St. Louis, Missouri due to the illness of the occupant thereof. The work week of this position was Saturday through Wednesday with Thursday and Friday as the rest days. Carrier used claimant to fill this temporary vacancy.

This use of claimant to fill this temporary vacancy was authorized by Rule 10 (b) of the parties' agreement, which provides in part as follows:

> "Employes notified in advance of their regular starting time will report at other points on the property when necessary to fill temporary vacancies. . . ."

Claimant occupied this position during the period from Saturday, November 18, 1950 to Sunday December 3, 1950, both dates inclusive. During this period he was off on the rest days of this position, which were, November 23 and 24, and November 30 and December 1, 1950. The question arises, did the working conditions of claimant's regular position at the Brooklyn shops attach to and follow him when he occupied the temporary vacancy on the position at the 14th Street shops, or did he accept the working conditions of the position at the 14th Street shops while he occupied it? This is true, because the agreement provides:

> "Days of rest apply to positions and not to employes, . . ." (See Rule 1 (e).)

Rule 10 (b) further provides:

> "They will work the prevailing shift hours, . . ., at the point to which temporarily assigned."

By this language it is agreed that any employe so used will accept the shift of the assignment to which he is temporarily assigned, that is, the working conditions of the position to which he is temporarily assigned. In other words, while so used, he comes within the following language of Rule 6 (a):

> ". . . except where such work is performed by an employe due to moving from one assignment to another. . . ."

This by reason of the quoted provisions of Rule 10 (b).

All rules of a collective bargaining agreement should be so construed, if the language will permit, as to bring about a practical application thereof on the property. To hold that the working conditions attaching to the position claimant regularly occupied at the Brooklyn shops attached to and followed him while he was being used to temporarily fill the other position would bring about abnormal working conditions. It would require carrier to pay

claimant on an overtime basis for a regular shift on the position he was temporarily occupying if such was worked on a rest day of his regular assignment. On the other hand, if a rest day of the position being temporarily filled fell on a work day of the regular assignment then carrier would be required to work claimant on his regular assignment on that day. In other words, if the working conditions of his regular assignment followed claimant then he should have worked his regular assignment on November 23, 24 and on November 30 and December 1, 1950. This, we think, was neither the intent nor purpose of the rules as written.

In view of what we have said we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1952.