

Award No. 1704
Docket No. 1605
2-AT&SF-EW-'53

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. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current applicable agreement the Carrier declined to properly pay Division Lineman J. M. Price for construction work performed on March 22nd, 1952 from 8:00 A. M. to 7:30 P. M. on his Division between Pampa and White Deer.

2. That accordingly the Carrier be ordered to compensate Division Lineman Price for the aforesaid time of 8:00 A. M. to 7:30 P. M., eleven and one-half hours at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Division Lineman Price, hereinafter referred to as the claimant, is a monthly rated employee, regularly employed by the carrier in the communications department as a division lineman with headquarters at Amarillo. On March 21, 1952, the claimant was instructed by wire, copy of which is submitted herewith and identified as Exhibit A, to be on hand March 22, 1952, between Pampa and White Deer to disconnect phones and install and connect phones. The claimant complied with these instructions and was required to work from 8:00 A. M. to 7:30 P. M. on March 22, 1952, which is the sixth day of the claimant's work week. The carrier declined to compensate the claimant for service rendered on March 22, 1952.

The agreement dated August 1, 1945, as amended January 22, 1946, and September 1, 1949, is controlling.

POSITION OF EMPLOYES: It is submitted on the foregoing statement of facts and the aforementioned agreements, particularly Rule 14, Section (i) of the agreement effective September 1, 1949 which reads:

"(i) Where employees now have a bulletined or assigned rest day, conditions now applicable to such bulletined or assigned rest day shall hereafter apply to the sixth day of the work week. Where employees do not have a bulletined or assigned rest day, **ordinary maintenance or construction work not heretofore re-**

employees do not have a bulletined or assigned rest day, ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week."

Prior to September 1, 1949, division linemen paid under Rule 14 were not required to perform work on Sunday except under circumstances such as in this instance, but they were required to file a tie-up with their immediate superior so that they could be reached when their services were required on Sundays.

Attention of the Board is directed to the specific cases cited in the carrier's letter of March 13 where division linemen performed on Sunday prior to September 1, 1949, work of the general character as that involved in this dispute. The carrier contends that under all the facts and circumstances in this particular case it properly required Division Lineman Price to perform the work on Saturday, March 22, without extra compensation.

The carrier takes issue with the contents of item 2 of the employees' statement of claim, which is to the effect that Division Lineman Price be compensated for time worked from 8:00 A.M. to 7:30 P.M., eleven and one-half hours at time and one-half rate. The employees' claim for 11'30" at time and one-half rate completely ignores the usual meal period as well as the provisions of Paragraph (a) of Rule 14 that "no overtime is allowed for any time worked in excess of eight hours per day." The carrier has already clearly pointed out that pay for Saturday, March 22, was included in Division Lineman Price's monthly salary, and should the Board decide that any extra allowance is due him it would necessarily have to be limited to punitive time only—viz., four hours extra for the day's work—as to comply with the employees' request would in effect result in triple time payable, as will readily be seen from the following tabulation:

8 hours' pay already included in monthly rate	= 8 hours
11' 30" time claimed at time and one-half rate	= 17' 45"
Total hours for which the employee would receive payment under this claim	= 25' 45"

The carrier petitions the Board to decline the claim on the basis that the work required of Division Lineman Price on March 22, 1952 was of the same nature as that required of employees of that classification to perform on Sunday prior to September 1, 1949, and obviously has the right to continue to have performed on Saturdays under the provisions of the second sentence of Paragraph (i) of Rule 14.

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.

The parties to said dispute were given due notice of hearing thereon.

Electrical Workers of System Federation No. 97 claim Division Lineman J. M. Price should have been paid for eleven and one-half hours of work he performed for carrier on Saturday, March 22, 1952, between the hours of 8:00 A.M. and 7:30 P.M. at time and one-half. This work was performed between Pampa and White Deer on claimant's Division.

Carrier was engaged in relaying track over a large area. The work claimant performed on Saturday, March 22, 1952, consisted of disconnecting phones

and installing and connecting phones for use in establishing a train order station at Mile Post 502, plus 13 poles, to be used in connection with track work in that area beginning on Monday, March 24th. March 22, 1952 was the sixth day of claimant's work week.

Carrier failed to compensate claimant for this work other than his regular monthly pay. It claims the right to do so by reason of the provisions of Rule 14 (i) of the parties' agreement. This section of Rule 14 provides:

"Where employees now have a bulletined or assigned rest day, conditions now applicable to such bulletined or assigned rest day shall hereafter apply to the sixth day of the work week. Where employees do not now have a bulletined or assigned rest day, ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week."

We think this rule was intended to give carrier the right to require claimant, or any other employe in a like situation, to perform ordinary maintenance or construction work on the sixth day of his work week only in cases of emergency. That is, to do so without being obligated to pay him therefor other than his regular monthly pay. The question is, was the work here of an emergency character?

Carrier must have known a considerable time in advance of March 22, 1952 that it would need to have this work done whenever it moved its track forces into this section. The work of relaying track is normally not an emergency undertaking. We can see no reason why carrier could not have had it done on one of claimant's work days. We do not think it was a situation to which Rule 14 (i) was intended to apply. It was not an emergency situation within the meaning thereof.

Carrier makes the observation that claimant, being on duty from 8:00 A. M. to 7:30 P. M., must have taken off an hour for lunch. There is no showing that he did. The claim is made that he worked eleven and one-half hours on that day. In the absence of any showing that he took an hour off for this purpose we find he worked straight through from when he began to when he quit.

The claim is for time and one-half rate. No rule is cited in support of this rate. We think, from reading all the sections of Rule 14 and particularly (a) and (b), it should only be on a pro rata basis.

AWARD

Claim sustained but at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1953.