

Award No. 1707

Docket No. 1616

2-IC-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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement it was improper to deny standby compensation to Linemen for rest day and holidays since September 1, 1949.

2. That accordingly the Carrier be ordered to compensate all Linemen for each rest day and holiday they were available and not paid standby time retroactive to September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, linemen in telegraph and telephone work were paid standby compensation for Sundays and holidays unless they were called to perform service or had permission to leave home station or be excused from such standby duty. Standby duty compensation was paid by the carrier on the last payroll period in December. Exhibits A through A-49, submitted herewith, reflect the manner in which these linemen were compensated for standby duty prior to September 1, 1949.

Effective September 1, 1949, the carrier unilaterally changed the aforesaid method of handling standby time conditions and compensation which is confirmed by exhibits submitted herewith and identified as Exhibits B and C. These notices dated August 19 and 25, 1949 specified that only linemen individually assigned for standby duty would be compensated the standby, but, such other employees not individually assigned had to obtain the carrier's permission to leave home station or be excused from standby duty by permission of the carrier. Linemen who were not individually assigned were not granted standby compensation since September 1, 1949, which is reflected in Exhibits A through A-49.

The agreement effective April 1, 1935, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that Rules 65 and 67 are applicable to the dispute here involved and are as follows:

Rule 65:

"Employees who are subject to call because of the requirements of the service, will notify office or officer designated by the manage-

ment. It is clearly not in the province or the power of the Adjustment Board to release employees, by interpretation of the Agreement, from the provisions of the rules agreement.

It should be observed from carrier's Exhibit A that after carrier's letter of November 5, 1951, employees allowed this dispute to lie dormant and to all intents abandoned until conference of March 24, 1953, a period of some seventeen months. The Railway Labor Act provides for the prompt and orderly settlement of disputes. In Third Division Award 4941 the Board said, "The expeditious handling of claims and grievances, as required by the Railway Labor Act, requires that a final determination of a dispute by a Carrier's highest officer designated to hear such matters becomes final unless an appeal is taken within a reasonable time thereafter." In Third Division Award 5389 the Board said, "The incidents involved in this case date back to May of 1946. The record shows that the Employees waited more than 18 months after the Carrier's decision to advance its claims. While we are not disposed under the circumstances of this case to invoke the doctrine of laches, we believe that the delay is significant. To us it shows a lack of real confidence in the claim and supports our conclusions that the claim is without merit." Carrier contends that the long delay denotes that it is completely unjustified and without merit.

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.

The Electrical Workers of System Federation No. 99 contend carrier violated its agreement with them when it failed to pay linemen compensation, as provided by Rule 67 of their agreement, for rest days and holidays, since September 1, 1949, when they were required to stand by for service and were available therefore by reason of the requirements of Rule 65. They ask that carrier be ordered to compensate all linemen who were available on their rest days and holidays, and not paid, for standby service. The claim is made retroactive to September 1, 1949.

While these rules were amended, effective September 1, 1949 when the forty-hour work week was put into effect, such changes did not affect the substance thereof. The changes were to substitute "Rest Days" for "Sundays" and the compensation from \$1.25 to \$2.27. We here quote the rules as amended.

Rule 65. Leave of Absence on Holidays and Rest Days.

"Employees who are subject to call because of the requirements of the service, will notify office or officer designated by the Management where they may be called and will respond promptly when called. When such employees desire to leave headquarters or sections they will secure authority from officer designated by the Management, who will grant permission if requirements of the service will permit."

Rule 67. Standby Time.

"Linemen on telegraph and telephone work who are required to be available for duty on rest days and holidays and are not paid

for these days except when actual service is performed, will be allowed two dollars and twenty seven cents (\$2.27) for each rest day and the seven recognized holidays."

Under Rule 67 linemen assigned to telegraph and telephone work, who are required to be available for duty on rest days and holidays for standby service and who are not called to actually perform service on such days, are entitled to be paid the sum of \$2.27 for each of such days they are required to standby and be available for that purpose. Rule 67 is a pay rule and the question is, when is a lineman "required to be available for duty on rest days and holidays" within the meaning thereof? Carrier says there are two situations to which Rule 67 applies: First, when such employees are specifically required to be available for duty on rest days and holidays by order of the carrier and do not actually perform any service; and Second, if they make request to leave their headquarters or sections, as Rule 65 provides they may, and such request is refused. The organization contends Rule 65 requires employees covered thereby to be available for duty on rest days and holidays unless they ask and are given permission by carrier to leave their headquarters or sections on those days.

Rule 65 applies to employees who are subject to call because of the requirements of the service. Admittedly it is the duty of section linemen to protect carrier's telephone and telegraph service. The claimants are therefore subject to call on their rest days, unless permission has been given them by management to absent themselves from their headquarters or sections, and must respond promptly when called. All rules of a collective bargaining agreement relating to the same subject matter must be read and construed together in order to get the true intent and meaning thereof. There is no question but what Rule 65 requires these claimants, within the meaning of Rule 67, to be available for duty on their rest days and on holidays unless given permission by carrier to absent themselves therefrom. They are, by the provisions of Rule 65, required to be available for duty on their rest days and on holidays just as much as if specifically called by carrier for that purpose. In this respect it should be remembered that if they are actually called for service and work on any of these days the pay for standby service is not applicable. See Rule 67.

We think the organization's contention to be correct. It is apparent, from the record, that up until September 1, 1949 that is the manner in which carrier applied these rules. It has only been since the advent of the forty-hour week that carrier has sought to apply these rules in accordance with its present position. But rules of the agreement can only be revised or changed in the manner set forth in Rule 69 and not by the unilateral action of either party.

Other contentions are made by carrier. Carrier is in error when it says that at no time while the claim was being handled on the property was there a claim made for compensation. The record shows time claims for standby service were made on the property.

Carrier also says the claim should not be allowed because the organization took such a long time to appeal to this Division, that is, from November 5, 1951 to March 24, 1953. While the Railway Labor Act contemplates that disputes shall be handled in a prompt and orderly manner those who enacted it did not see fit to put a time limit therein within which an appeal must be taken. In the absence thereof we cannot deny a claim solely on that basis unless, because of such delay, injury or damage will be caused thereby. Carrier cannot very well contend it can be injured and damaged by an order requiring it to meet the obligations of an agreement which it has made. If the requirements of Rule 65 are no longer needed to satisfactorily meet carrier's operational requirements the only way it can get relief therefrom is by the orderly procedures referred to in Rule 69. We have neither the authority nor the right to do it by an award.

AWARD

Claim sustained.

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.