

Award No. 1785

Docket No. 1632

2-SL-SF-EW-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement, Electrician C. F. Edmiston was improperly compensated for performing service on his regular assigned rest day, June 21, 1951.

(2) That accordingly the Carrier be ordered to additionally compensate the aforementioned Electrician the difference between 7 hours' pay and 8 hours' pay at the time and one-half rate for the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Electrician C. F. Edmiston, hereinafter referred to as the claimant, is regularly assigned at the Lindenwood Shops—St. Louis, Missouri; in the early morning of June 21, 1951 Electrician Charles L. Randall (also employed at the Lindenwood Shops) laid off a few minutes prior to 8:00 A. M., on account of serious illness of his mother, wherein at 8:10 A. M., the claimant was notified to fill the vacancy created by Electrician Randall and due to the short notice given the claimant was unable to report and make himself available for the 8:00 A. M. shift. The claimant reported as directed and went to work at 9:00 A. M., and was paid for seven hours at time and one-half or 10½ hours.

The agreement dated January 1, 1945, and amended June 1, 1952, is controlling.

POSITION OF EMPLOYEES: It is submitted that under the above facts and the unambiguous provisions of Rule 6, paragraph (f) reading:

"Service rendered by employes on their assigned rest days shall be paid for under Rule 7 except if a regularly assigned employe is required on either or both his assigned rest days to relieve (take the place of) another employe regularly assigned to work an eight (8) hour shift on such day, he shall be paid for a minimum of eight (8) hours at the rate of time and one-half for each such assigned rest day so worked."

the claimant was entitled to eight hours' compensation at the time and one-half rate for performing service on his rest day June 21, 1951, when he

guarantee or other agreement rules when an employe or employes claimed pay for work where there was a showing that the claimants were not available to perform the work for which compensation was claimed. The Third Division has generally denied claims of this character upon the introduction of evidence which established that the claimant was not available for work.

This carrier was a party to a dispute of this character in Award 6180 of the Third Division, which denied the employes' claim. In that case the claimant was unable on account of flood conditions to report and make himself available to protect his regular assignment on July 15 and 16, 1951. The Board held when the claimant failed to protect his assignment the carrier did not violate the effective agreement when it failed to compensate the claimant for July 15 and 16, 1951. The following paragraph is taken from the Board's opinion:

"The guarantee rule provides only that the Carrier provide employment for the stipulated period. It does not require the Carrier to pay an employe who does not report for work. Award 4750."

Award 4750 of the Third Division concerns a claim in behalf of a sizable number of clerical employes for a full day's pay for Friday, September 19, 1947, who did not report for work or otherwise make themselves available on account of a hurricane. The claims in behalf of those employes who failed to report or otherwise make themselves available for work were denied.

It is the carrier's position that under the circumstances involved in this dispute Rule 6 (f) does not require the carrier to pay the claimant a minimum of eight hours.

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.

The Electrical Workers of System Federation No. 22 make this claim in behalf of Electrician C. F. Edmiston. They contend, based on the provisions of Rule 6(f) of their agreement, that claimant was improperly compensated for services he performed on one of his regularly assigned rest days, Thursday, June 21, 1951.

Rule 6(f) provides:

"Service rendered by employes on their assigned rest days shall be paid for under Rule 7 except if a regularly assigned employe is required on either or both his assigned rest days to relieve (take the place of) another employe regularly assigned to work an eight (8) hour shift on such day, he shall be paid for a minimum of eight (8) hours at the rate of time and one-half for each such assigned rest day so worked."

The facts are not in dispute. Claimant was regularly assigned at Lindenwood Diesel Shop, St. Louis, Missouri, to a work week extending from Saturday through Wednesday with Thursday and Friday of each week as rest days. Electrician Charles Leroy Randall was regularly assigned at the same point with a work week from Sunday through Thursday with Fridays and Saturdays as rest days. Both had tours of duty from 8:00 A. M. to 4:00

P.M. On Thursday, June 21, 1951, about 7:45 A.M. Randall requested to be off duty that day because of the serious illness of his mother. This request was granted.

Carrier, as soon thereafter as possible, notified claimant to report and fill this vacancy. This claimant did but due to several factors, including the short notice he received to report and the distance he lived from where the work had to be performed, was not able to do so until 9:00 A.M. He worked until 4:00 P.M. For these services he was paid for seven hours at the rate of time and one-half. He here seeks additional compensation for these services of one hour at time and one-half. This, on the theory that the factual situation brings it squarely within the provisions of Rule 6(f) which provides he shall be paid for a minimum of eight hours at the rate of time and one-half for each such assigned rest day so worked.

The carrier contends this rule does not require the payment of a minimum of eight hours when, due to circumstances beyond its control, the employe is not available to perform eight hours of work. We do not think the circumstances were entirely beyond carrier's control. But even so we find no such qualification in the language of the rule, which is clear and unambiguous. The rule is specific and when the factual situation, such as here, comes within its terms it provides exactly what the compensation shall be. We have no authority to provide otherwise.

It should be understood that we are not here dealing with a situation where an employe, by his own conduct, absents himself from work during all or any part of an assigned tour of duty and when, because thereof, it can be said to be his fault that he did not work the full assignment.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1954.