

Award No. 1804

Docket No. 1674

2-C&O-EW-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly compensated Electrician J. G. Sabo at straight time rate for service performed on September 20, 1952.

2. That accordingly the Carrier be ordered to additionally compensate the aforementioned Electrician in the amount of four (4) hours' pay at the applicable hourly rate for September 20, 1952.

EMPLOYEES' STATEMENT OF FACTS: Electrician J. G. Sabo (hereinafter referred to as the claimant) was regularly assigned in the back shop at Huntington on the 7:00 A. M. to 3:30 P. M. shift, working Monday through Friday with Saturday and Sunday designated as his rest days. The claimant worked his regular work week of Monday through Friday, September 15 through September 19, 1952. On September 20th, the claimant was used to fill the place of Electrician Guy C. Collins at the diesel house on the 7:00 A. M. to 3:00 P. M. shift, who was being used to fill the place of Lead Electrician H. M. Clements who was off on his annual earned vacation. The claimant under the foregoing facts worked a total of six (6) straight days, or forty-eight (48) hours at the straight time rate. The agreement effective July 1, 1921, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that under Rule 6 (c) reading in part:

"(c) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate . . ."

the claimant is entitled to be compensated for the one (1) day he worked beyond his work week at the time and one-half rate in compliance with that part of the above quoted rule.

In view of the above, your Honorable Board is requested to sustain the claim of the employees in its entirety.

assigned six days per week Monday to Saturday. Running repair employees necessary to continuous operation were, at the employees' request, regularly assigned seven days per week and worked every Sunday and holiday unless excused.

When a vacancy occurred on a 7-day running repair assignment, an employee was drawn from 6-day back shop forces to fill it, and the one so drawn assumed the working conditions of the 7-day job to which he was thus transferred, and worked all Sundays and holidays while on the 7-day assignment unless excused. At that time, rate and one-half was paid for Sundays as such, and the opportunity for filling such temporary vacancies was sought after because of the greater earnings afforded by the working of an additional day each week at rate and one-half.

Sabo consented to transfer on Saturday, September 20, from his back shop assignment to an entirely separate and distinct assignment on the same shift in the Diesel House, in precisely the same manner as back shop employees at Huntington have always moved to such temporary running repair vacancies. Under Rule 6 (c) Saturday and Sunday were no longer his assigned rest days upon moving to Collins' position. Instead, Sunday and Monday became his assigned rest days, as well as the more desirable working hours—7:00 A. M. to 3:00 P. M. with a free meal period, and Sabo was off Sundays and Mondays while filling Collins' position.

Rule 6 (c) provides that employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of **their work weeks**.

**"EXCEPT WHERE SUCH WORK IS PERFORMED BY AN EMPLOYEE
DUE TO MOVING FROM ONE ASSIGNMENT TO ANOTHER."**

Sabo performed work on Saturday "due to moving from one assignment to another," which clearly brought him within the exception quoted, and removed payment for his services on Saturday, September 20, 1952, from the rate and one-half provision of the first part of the rule.

Electrician Sabo was properly paid at straight time for Saturday, September 20, 1952, and carrier submits that the claims 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 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.

Claimant was regularly assigned in the Back Shop at Huntington, West Virginia, 7:00 A. M. to 3:30 P. M., with Saturday and Sunday as rest days. He worked his regular work week ending Friday, September 19, 1952. On September 20, 1952, he was used to fill the position of Electrician Guy C. Collins at the Diesel house on the 7:00 A. M. to 3:00 P. M. shift, Collins, being instructed to fill the place of Lead Electrician H. M. Clements who was taking his annual earned vacation.

The Diesel house is a three shift, seven day running repair operation with staggered rest days to provide the forces required throughout the seven days. The Back Shop is a locomotive repair shop operating on a single shift basis, 7:00 A. M. to 3:30 P. M., with rest days Saturday and Sunday. Lead Electrician Clements was assigned to work the first shift at the Diesel house with Thursday and Friday as his rest days. His annual vaca-

tion commenced Saturday, September 20, 1952 and ended Wednesday, October 1, 1952. He remained off his assigned rest days, Thursday and Friday, and returned to work on Saturday, October 4, 1952. Electrician Collins, whose rest days were Sunday and Monday, filled Lead Electrician Clements' position, taking the assigned rest days of that position. Claimant filled the position of Electrician Collins and took the assigned rest days of that position, Sunday and Monday, September 21, 22, 28 and 29, 1952. He claims pay for Saturday, September 20, 1952, at the time and one-half rate, on the theory that he had worked six days in one week, Saturday, September 20 being the sixth day. No objection is made to the use of claimant in filling Electrician Collins' position. The only question is that of pay for Saturday, September 20, 1952.

The dispute in this case has been conclusively settled by awards of the Third Division. We shall state briefly the controlling principles.

(In determining if an employe worked in excess of five days or 40 hours in any work week, it is the assigned work week which determines the issue. The fact that an employe works more than five successive days in a calendar week is not a controlling factor. The question is: Did he perform service on more than five days during his assigned work week. In the present case, claimant worked Monday through Friday during his regularly assigned work week. He was then used on a new position commencing Saturday morning. This was a new position in which he assumed the work days, hours of service and rest days of that position. We hold, therefore, that claimant worked Monday through Friday on his assigned position in the Back Shop and worked Saturday as part of his new assignment in the Diesel Shop. Consequently he did not work six consecutive days in an assigned work week.) Awards 4592, 5811, 6408, 6281, Third Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1954.