

Award No. 2270

Docket No. 2030

2-WAB-EW-'56

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. 13, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the controlling agreement District Lineman H. F. Stiles was not compensated by the Carrier for time waiting and traveling on Sunday, February 21, 1954, traveling from Litchfield, Illinois, to Brooklyn, Illinois, and return.
2. That accordingly the Carrier be ordered to compensate the aforesaid District Lineman in the amount of three (3) hours' and ten (10) minutes' at time and one-half rate of pay.

EMPLOYEES' STATEMENT OF FACTS: District Lineman H. F. Stiles, hereinafter referred to as the claimant, is employed by the Wabash Railroad Company, hereinafter referred to as the carrier, as a district lineman with headquarters at Litchfield, Illinois. Claimant is compensated on a monthly basis and is assigned to work Monday through Friday with Saturday a standby day and Sunday his rest day.

On Sunday, February 21, 1954, the claimant was instructed by Assistant Supervisor J. T. McNeal to go to Brooklyn, Illinois, to make the necessary repairs to the line at the main office, Brooklyn Yards, on account of all telephones being out of service. The claimant made the necessary preparations of gathering his tools and supplies together in the early morning and boarded train No. 3 for Brooklyn, Illinois at about 5:00 A. M. The claimant made the required repairs at Brooklyn and returned to Litchfield on train No. 4 arriving about 10:30 A. M.

The time claim submitted for this day's service, February 21, 1954, was for six and one-half (6½) hours at the overtime rate of pay, from 4:00 A. M. to 10:30 A. M. After an exchange of correspondence and discussion in conference between Superintendent of Signals and Communications Mr. G. A. Rodger, and the general chairman, Mr. Rodger in his letter of July 27, 1954, stated,

"We will pay District Lineman Stiles three hours and twenty minutes at overtime rate for the time worked February 21, 1954."

employees in the same craft or class were to apply to service on such assigned rest day.

The parties failed to agree on the rest day rule as is shown on page 1 (Rule 3(c)) and page 2 (Rule 3(e)) of the Memorandum of Agreement of July 27, 1949. The employees committee's position was that time spent in traveling and waiting should be considered as work and paid for at the punitive rate. The carrier's position was that time spent in traveling and waiting was not work and had not been so considered under the Memorandum of Agreement of April 16, 1944, which was effective until September 1, 1949, and which had the effect of providing payment at the rate of time and one-half for work performed on Sundays and the seven (7) specified holidays.

This dispute was submitted to the Forty-Hour Week Committee, docketed by that committee, and identified as follows: "By the Carriers W-811, SC 256 and W-559, SC-195 and by the Employees as W-WAB-SC-TT 209 and W-WAB-SC T&T-168," and to date no decision has been made thereon by the forty-hour week committee.

There is, therefore, no rule in the current agreement as of this date prescribing that time spent by district linemen in traveling and waiting in connection with emergency work required on his rest day is to be considered as work and paid for at the time and one-half rate.

In the handling of this dispute on the property, the committee has referred to no rule of the agreement covering linemen in support of this claim. The submission of this dispute to this Division is in fact an attempt to have this Board award a rule.

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.

This claim is made in behalf of District Lineman H. F. Stiles. It is a claim for 3 hours and 10 minutes at time and one half for time spent in waiting and traveling on Sunday, February 21, 1954.

Stiles was a monthly rated employe with headquarters at Litchfield, Illinois. He was regularly assigned to work from Monday through Friday with Saturday as a standby day and Sunday his rest day. On Sunday, February 21, 1954, Assistant Supervisor J. T. McNeal instructed Stiles to go to carrier's Brooklyn Yards, East St. Louis, Illinois, to make necessary repairs to the lines at the main office located there as all the telephones were out of service. Stiles boarded train No. 3 for Brooklyn Yards at Litchfield at about 4 A. M. Arriving at the Brooklyn Yards he made the necessary repairs to restore all telephone service and then returned to Litchfield on train No. 4, arriving there about 10:30 A. M. Stiles put in a claim for 6½ hours of work at time and one half, thus making claim for all the time that elapsed from when he left Litchfield until he returned thereto. Carrier paid Stiles for 3 hours and 20 minutes at the overtime rate, that being the length of time it actually took to make the repairs, but it declined to pay for the 3 hours and 10 minutes which Stiles used in going to the Brooklyn Yards and returning therefrom to Litchfield. The claim covers the latter item.

Carrier first contends the claim is not here for our consideration be-

cause it is barred by reason of the fact that the organization failed to handle it on the property in the usual manner up to the highest officer designated by it to handle such matters. The handling here was done in the same manner as in Docket No. 2061 on which our Award No. 2139 is based. What was therein said and held on this question is here controlling. In view thereof we find this contention to be without merit.

District linemen are covered by an agreement between the carrier and the International Brotherhood of Electrical Workers effective October 1, 1940 as amended by numerous memorandum of agreements entered into subsequent thereto.

In the beginning it was not contemplated that linemen would be required to perform ordinary maintenance or construction work on Sundays and on seven enumerated holidays but if, in cases of emergency in connection with the maintenance of a district by a district lineman, the latter was required to work on any of the foregoing days no additional compensation would be allowed him therefor. This, however, was changed by a Memorandum of Agreement entered into by the parties effective August 16, 1944. Therein it was provided that if district linemen were required to work on Sundays or on any of the designated holidays enumerated in Rule 3 of the parties' agreement effective October 1, 1940, he would be paid an additional 4 hours at the pro rata hourly rate for such day or days. Thus work performed on Sundays and holidays would be paid for at time and one half since the monthly rate paid employes covered by the agreement included the work performed on such days at the pro rata rate. It should be noted that a "Note" to this provision expressly provided "The term 'work' as used in the above paragraph does not include time waiting or traveling." This was the situation as it related to Sunday work performed by district linemen when the 40-Hour Week Agreement was entered into.

On March 19, 1949 the 40-Hour Week Agreement was entered into effective September 1, 1949. It provided, insofar as here material, that: "Such employes (which would include district linemen) shall be assigned one regular rest day per week, Sunday if possible." First sentence of the Second Paragraph of Section 2 (d) thereof. The parties could not agree with respect to what the pay should be for services performed on such rest days and submitted this issue to the "40-Hour Week Committee" provided for by Article VI thereof. The committee has never rendered a decision thereon and the matter is apparently still pending before it. Under this situation the following language of Article VI has application: "In the event such Committee finds it impossible to render a decision in any case prior to September 1, 1949, the carrier involved in such dispute shall nevertheless place in effect on its property for the employes involved in such dispute the 40-hour week, as provided for in this agreement." We return then to the second sentence of the second paragraph of Section 2 (d) of the 40-Hour Week Agreement. It provides: "Rules applicable to other employes of the same craft or class shall apply to service on such days." Thus we are left without any express rule covering the situation and must turn to other rules to see if they apply for, in the absence of a controlling rule, we do not have authority to allow the claim.

In this respect Section 3 (b), "Service on Rest Days," provides: "Where Sunday is one of the rest days existing rules providing for compensation on Sunday shall apply." And, Section 3 (g), insofar as here material, provides: "Existing rules governing travel time, waiting time. * * * will remain unchanged." We think these provisions help to solve the problem here presented. This is further evidenced by the fact that the parties' Memorandum Agreement of July 27, 1949, dealing with the 40-hour week contains the same provision as to work performed on the seven holidays already referred to and set out in the parties' agreement effective October 1, 1940, as amended.

Under the parties' agreement, as amended, as of September 1, 1949, we think claimant was entitled to be paid at time and one half for all work he performed on Sunday, February 21, 1954, which was his rest day. How-

ever work, in the sense as that term is therein used, does not include the time claimant spent in waiting or traveling in going from his headquarters at Litchfield to Brooklyn Yards, where the work was actually performed, and, after it had been completed, returning to Litchfield. That is, it would only include the time actually used in performing it. In view of the foregoing we find claimant was properly paid.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October, 1956.