

Award No. 3566

Docket No. 3291

2-NP-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement, the Carrier improperly compensated Carmen J. R. Neuberger and J. A. Zajak at straight time rate for service performed on March 1, 1958.

2. That accordingly the Carrier be ordered to additionally compensate the afore-mentioned Carmen in the amount of four (4) hours' pay at the applicable hourly rate for March 1, 1958.

EMPLOYES' STATEMENT OF FACTS: J. R. Neuberger and J. A. Zajak (hereinafter referred to as the claimants) were regularly assigned in the car shop at Minneapolis on the 7:30 A.M. to 4:00 P.M. shift, working Monday through Friday with Saturday and Sunday designated as their rest days. During their work week commencing February 24, 1958, the claimants were directed by the car foreman to change their work weeks from Monday through Friday to Tuesday through Saturday. As a result the claimants worked on March 1, 1958.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory settlement. The agreement effective July 1, 1955 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that under Rule 7(b) reading in part:

"(b) , 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"

and the interpretation of Rule 7(b) agreed to by System Federation No. 7 and the carrier effective November 1, 1957, which reads:

"In the application of Rule 7(b), a regularly assigned employee required to work on the sixth or seventh day of his work week in moving

contended by the carrier, they performed only five days of service in the work week extending from Tuesday through Saturday, namely, on February 25, 26, 27 and 28, 1958, and March 1, 1958. If these employees first took service on their new assignment on March 1, 1958, as contended by the employees, they worked only five days in the old week extending from Monday through Friday immediately preceding March 1, 1958, namely, on February 24, 25, 26, 27 and 28, 1958, and did not work in excess of five days in the new work week extending from Tuesday through Saturday commencing with March 1, 1958. Therefore, on the employees' own theory of this dispute the claim of Carmen Neuberger and Zajac is not sustained by Rule 7 (b) of the July 1, 1955 shop crafts' agreement.

The carrier has shown that:

1. Prior to February 25, 1958, Carmen Neuberger and Zajac occupied positions that were assigned work weeks extending from Monday through Friday with Saturday and Sunday as rest days.
2. Commencing with February 25, 1958, Carmen Neuberger and Zajac occupied positions that were assigned work weeks extending from Tuesday through Saturday with Sunday and Monday as rest days.
3. Carmen Neuberger and Zajac did not work in excess of five days in their work week immediately prior to February 25, 1958.
4. Carmen Neuberger and Zajac did not work in excess of five days in their work week commencing with February 25, 1958.
5. Assuming for the sake of argument, that Carmen Neuberger and Zajac did not take service on their new assignment until March 1, 1958, these employees nevertheless did not work in excess of five days in the work week attaching to the positions occupied immediately prior to that date and did not work in excess of five days in the work week attaching to the positions occupied commencing with that date.
6. Rule 7(b) of the July 1, 1955 shop crafts' agreement, subject to certain exceptions not here material, grants payment at time and one-half rate only for work in excess of five days in a work week.
7. Award No. 1804 of this Division, and the awards of the Third Division cited therein, are competent authority for the conclusion that in the application of Rule 7(b) the axis upon which this dispute turns is whether Carmen Neuberger and Zajac on March 1, 1958 had worked in excess of five days in their work week.
8. The facts in this docket make it manifestly plain that Carmen Neuberger and Zajac had not worked in excess of five days in their work week on March 1, 1958, regardless of whether they took service on their new assignment on February 25, 1958, or on March 1, 1958.
9. The claim covered by this docket should be denied in its entirety.

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 employees 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.

Parties to said dispute were given due notice of hearing thereon.

Prior to February 25, 1958 claimants were regularly assigned Monday through Friday with Saturday and Sunday rest days. They worked Monday, February 24, and on Tuesday, February 25, began a new assignment of Tuesday through Saturday, with Sunday and Monday rest days. Thus they worked six consecutive days beginning Monday, February 24, through Saturday, March 1. They claim premium pay for working the sixth day of their work week and rely on the interpretation of Rule 7(b) of the Shop Craft's Agreement agreed to by the parties effective November 1, 1957. The carrier maintains that the interpretation is not applicable because the claimants did not work the sixth day of either work week.

The interpretation of Rule 7(b) of the Shop Craft's Agreement of July 1, 1955 provides:

"In the application of Rule 7(b), a regularly assigned employee required to work on the sixth or seventh day of his work week in moving from one assignment to another at the direction of the Railway Company will be paid one and one-half times the basic straight time rate for work performed on the sixth or seventh day of the work week assigned to the position occupied immediately prior to moving to another assignment, provided, however, that such an employee will not be paid at one and one-half times the basic straight time rate for work performed on the sixth or seventh days of the work week assigned to the position occupied immediately prior to moving to another assignment after the expiration of seven calendar days computed from the beginning of the work week of the position occupied immediately prior to moving to another assignment."

Prior to its interpretation, Rule 7(b) excluded overtime pay for work performed on the sixth or seventh day of the employee's work week where such work is occasioned by his moving from one assignment to another. The adoption of the interpretation removed that exclusion.

In this case the claimants worked the first day of their assigned work week which began on Monday. They moved to a new assignment at the direction of the carrier and worked that assignment Tuesday through Saturday. Saturday was the fifth day of their new assignment but it was the sixth day of the work week assigned to the position occupied by them immediately prior to moving to another assignment, as provided in the interpretation mentioned. We think the interpretation is applicable to the situation presented in this record and that claimants are entitled to be paid the premium specified in the interpretation of Rule 7(b) for having worked on Saturday, March 1, 1958.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1960.