

Award No. 4485
Docket No. 4441
2-CMStP&P-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Carrier, unjustly deducted and denied full payment of wages for extra services performed on September 16 and 17, 1961, standby days of Trolley Lineman John H. Kautzman, hereinafter referred to as the claimant, such deduction amounting to sixteen (16) hours at the prevailing straight time rate of pay.
2. The claimant was required to perform additional services on his standby days, not comprehended or compensated for within the rate structure of his monthly rate of pay.
3. The employees contend the only service required on their standby days is to respond to emergency calls to repair trolley and highlines in cases when the trolley or highlines are disrupted by storms, slides, fires and train wrecks.
4. The employees further contend that the services performed on September 16 and 17, 1961 was ordinary maintenance or construction work and in accordance with the provisions of the current schedule Rule No. 29 of the Electrical Workers' Agreement, effective September 1, 1949, such services would not be required of them on their standby days.
5. The employees further contend that when such ordinary maintenance or construction work is required of them on their standby days, the Carrier is then subject to pay at the overtime rate for each hour that the Claimants are required to perform service, and accordingly the Carrier be ordered to compensate the Claimants the amounts deducted.

6. The employees further contend that the payment for the sixth day of the work week recognized as their standby day, is to compensate them for any and all emergency service performed after their normal working hours during the work week, Saturdays included, for which no additional compensation is paid to their monthly rate of pay. They must also standby after each work day period or inform their supervisors as to where they may be reached in order to respond for emergency calls.

EMPLOYEES' STATEMENT OF FACTS: Trolley Lineman John H. Kautzman, hereinafter referred to as the claimant, is employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the carrier, as monthly rated trolley lineman five days per week with Saturday as a standby day.

During a period both before and after September 16 and 17, 1961, the carrier was engaged in a construction project of lowering the tracks through tunnels located on lines west in its electrified main line territory. The track forces (maintenance of way) were engaged in the performance of that work and in connection therewith and during this period of construction, the claimant was also engaged in performing the work on the trolley line, constructing it so that it was properly located in relation to the road bed and rails.

On Saturday, September 16, 1961, which is the claimant's standby day, and on Sunday, September 17, 1961, the claimant's rest day, the claimant was instructed to continue his work on this construction project and he worked fifteen hours on September 16, 1961 and sixteen and one-half hours on Sunday, September 17, 1961.

The carrier, in accordance with the agreement and understanding, paid the claimant for all of those hours at time and one-half for working on construction work on those days, but subsequently deducted wages from his salary amounting to \$44.00.

Prior to the occurrence of this dispute, such monthly rated employees received time and one-half, in addition to their monthly rate, for performing such work as is here involved when such work was performed on their standby days and/or rest days and was the subject of discussion and an understanding was had with Mr. A. G. Britzius, assistant to general manager, who was the highest officer of the carrier authorized to handle disputes concerning trolley linemen. (lines west.)

The claim was filed and handled in accordance with the agreement for the amount deducted and was appealed up to and including Mr. S. W. Amour, assistant to vice president, as shown by a copy of the general chairman's letter. Mr. Amour also declined to settle the case, as shown by a copy of his letter.

The agreement, effective September 1, 1949 as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that based upon the foregoing statement of facts and of the aforementioned agreement, particularly Rule 29, reading:

"Employees regularly assigned to perform road work and paid on a monthly basis shall be assigned one regular rest day per week,

As there is no schedule rule or agreement which either provides or contemplates additional payment over and above the monthly rate for service performed on the sixth or standby day or days of the work week of a monthly rated road service employe such as the claimant, it will be readily apparent that by the instant claim the employes are attempting to secure through the medium of a board award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held by the second division, as well as by the other three divisions and the various special boards of adjustment, that your board is not empowered to write new rules or to write new provisions into existing rules.

The carrier wishes to point out that the instant claim is one of five identical cases presently before your board, the other four cases identical to this one being Case Numbers 6293, 6294, 6295, and 6296 (the case numbers referred to above are the ones assigned to said cases by the Executive Secretary of the Second Division, National Railroad Adjustment Board). So as to not unduly burden your board the carrier attempted to persuade the employes to progress only one of the five cases to your board with the understanding that the remaining four would be held in abeyance to be disposed of on the basis of the award rendered in the one case progressed to your board; however, for some unexplained reason the employes would not enter into such an agreement with the carrier. The carrier mentions this so that your board will understand that it is through no fault of the carrier that your board is now burdened with five identical cases, instead of only one.

It is the carrier's position that there is absolutely no basis for the instant claim, and we respectfully request that it 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.

Parties to said dispute waived right of appearance at hearing thereon.

The parties to this dispute are the same as in Award No. 4481.

The facts are essentially the same as in that Award, and the submissions contain the same type of evidence and arguments.

Our Award No. 4481 governs here and the claim must be sustained in accordance therewith.

AWARD

Claim sustained in accordance with above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.