

Award No. 4488
Docket No. 4460
2-AT&SF-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. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current agreement, P. A. Chubb was unjustly dealt with when he was required to stay in Chicago a Saturday and Sunday, July 8 and 9, 1961, the rest days assigned to Mr. Chubb.
2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Mr. Chubb, twelve and one-half (12½) hours at his regular overtime rate for the date of July 8, 1961. Also that the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Mr. Chubb, twelve and one-half (12½) hours at his regular overtime rate for the date of July 9, 1961.

EMPLOYEES' STATEMENT OF FACTS: Mr. P. A. Chubb, hereinafter referred to as the claimant, was regularly employed (at the inception of this dispute) by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, as an hourly rated communications department electrician, on the Eastern Lines, with headquarters, Topeka, Kansas.

As stated, the claimant is regularly employed as a communications department electrician, on the Eastern Lines, with headquarters, Topeka, Kansas, Monday through Friday, Saturday and Sunday rest days, and taking the hours of assignment of the location at which he may be working.

The claimant's regular assigned duties were the installation, repair and maintenance of telegraph equipment at the several telegraph office locations on the Eastern Lines. At the inception of this dispute he was assigned to work in the telegraph office, Chicago, Illinois.

Without prejudice to its position as stated hereinabove, that the claim of the employees in the instant dispute is wholly without support of the agreement rules or merit and should be denied, carrier further asserts that as shown in the first paragraph on page 2 of this submission, there is a variance in the monetary claim as stated in notice of Mr. Michael Fox, President of the Railway Employees' Department, AFL-CIO, of February 6, 1963, addressed to Executive Secretary H. J. Sassaman, Second Division, National Railroad Adjustment Board, for compensation in behalf of the claimant for twelve and one-half (12½) hours on each July 8 and 9, 1961, at his regular overtime rate, and that presented by the Employees in handling of this case on the property and which requested payment to the claimant of twelve and one-half (12½) hours' waiting time for each day July 8 and 9, 1961, or a total of twenty-five (25) hours at his regular rate of pay. The Adjustment Board has consistently recognized and held that it is without authority to consider claims which differ from those initially presented to and handled with a carrier to a conclusion on the property. See, for example, Second Division Award 1810, involving this carrier, Third Division Awards 5077, 5283, 5380, 5501, 5502, 9949 and Fourth Division Award 826. The Adjustment Board has likewise consistently held that the scope of a claim to be considered by the board cannot exceed the scope of the claim submitted and handled on the property. See, for example, Third Division Awards 5436, 6100, 6135 and others.

Furthermore, the carrier asserts that the petitioner's claim for penalty in behalf of the claimant is also excessive since Item 2 of the claim as presented to the board seeks payment at the punitive time and one-half rate of pay, contrary to the well known and firmly established principle of this and other divisions of the National Railroad Adjustment Board that the proper compensation for work not performed is at the pro rata rate.

CONCLUSION: In conclusion, the carrier affirms that:

- (1) The claimant was paid not less than eight (8) hours for each working day, plus actual necessary expenses, while performing temporary service at Chicago during the period July 3 to 17, 1961, all as provided for under the terms of Shop Crafts' Rule No. 11.
- (2) Sufficient evidence has been submitted to show that the payment made to the claimant is representative of past practice over the years, without protest or claims from the Employees.
- (3) The employees have failed to furnish any proof that the claimant, as well as other members of the gang, have been paid differently under similar circumstances.

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.

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

The issue before the Division is whether a claimant who was called upon to protect a temporary vacancy away from his headquarters station, may consider the intervening two rest days of his uncompleted temporary assignment as waiting time, requiring the Carrier to compensate him therefor.

The Division finds that the issue to be resolved is complicated by a controverted question of fact. The claimant insists that he was directed by his supervisor to remain in Chicago on his rest days and that therefore he was "waiting" under the terms of Rule 11. The Carrier, however, is equally insistent that the claimant was not "waiting" when he was told that he could not return to his headquarters from Chicago at Company's expense on his rest days, but otherwise his activities on those days were in no way restricted.

The Division finds that the claimant has not sustained his required burden of proof to demonstrate that the Company directed him to "wait" in Chicago on his rest days. The claimant's exhibit purporting to prove this fact was contradictory on its face and not convincing or persuasive of the point it sought to establish.

The record more clearly indicates that the claim was not well founded because there is clear evidence that the claimant performed no work or service for the Carrier on his rest days—which were also the rest days of the employe he was temporarily relieving; that he was not required to perform any standby duty or remain on any sort of call during those rest days; that the rest days intervened during an assignment which was not yet completed, and that the claimant was free to do what he wanted on those rest days, with the exception that he could not return to headquarters at the Company's expense, and that he had to be available to cover his assignment at the conclusion of his rest days.

Under these facts, as developed from the record, it does not appear that the claim comes within the terms and provisions of the applicable Rule 11, and, therefore, it cannot be sustained.

AWARD

Claim denied.

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.