

Award No. 5248

Docket No. 5111

2-CB&Q-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That, under the current agreement, the Carrier improperly deducted the sum of \$21.30 from System Electrician D. D. Holle's salary for his availability day of December 27, 1964.

2. That, accordingly, the Carrier be ordered to make whole the aforesaid Claimant by reimbursing him in the amount of \$21.30 for beng available for work at Aurora, Illinois, on his availability day, December 27, 1964.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Burlington and Quincy Railroad Company, hereinafter referred to as the Carrier, employs System Electricians whose work week is designated as the starting time on Monday through the designated quitting time Friday, each normal work day consisting of eight (8) hours labor. These Electricians are also assigned "availability" or "subject to call" days by the Electrical Engineer's Office according to the seniority roster at each headquarters location where Electricians are employed and the availability days are usually in rotation, either Saturday or Sunday.

Sunday, December 27, 1964, was Claimant's availability day and Claimant is employed as a System Electrician by the Carrier with assigned headquarters at Aurora, Illinois, and his assigned work hours are 7:00 A. M. to 3:30 P. M., Monday through Friday, with one half hour off for lunch, plus one day per week considered the "availability" or "subject to call" day.

Sunday, December 27, 1964, was Claimant's availability day and Claimant was available for work during all of the daytime hours of the day. After Claimant had been home the entire daylight hours on his availability day, he left his house for a brief period of time (about 15 minutes); at approximately 8:00 P. M. and during this short absence from his home, Carrier made one phone call to Claimant's home allegedly for the purpose of instructing the Claimant to report for work servicing the heating plants at Aurora Depot,

The Carrier briefly states its position in this dispute, in the form of a summary, as follows:

1. A System Electrician must remain available for calls on the days they receive pay as availability days. The General Chairman of the IBEW agreed with this principle in 1949. See Carrier's Exhibit No. 1.

2. The period of availability is a full twenty-four hours beginning with the starting time of the System Electricians assignment. See Second Division Awards 1485 and 1674.

3. When a System Electrician is not available on his availability day it is proper to deduct a day's pay from his monthly salary.

4. The previous case involving System Electrician L. P. Weber in 1952 stands as a precedent here which must be followed by the Board.

The Carrier submits that this claim must be denied.

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All data herein and herewith submitted have previously been submitted to the organization.

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Oral hearing is waived.

(Exhibits not reproduced.)

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 were given due notice of hearing thereon.

System Electricians, whose work week is Monday through Friday, are assigned "availability" days and "rest" days. Claimant was so assigned to work Monday through Friday with Saturday as his rest day and Sunday as his availability day. This is in compliance with Rule 1(j) of the Agreement applicable to employes paid on a monthly basis.

There is no disagreement that the monthly rate includes services performed on the availability date. Employes argue only that Claimant's availability day is not a twenty-four hour day, but only his same regularly assigned eight hours which he works Monday through Friday. The Carrier contends that the availability day is the full twenty-four (24) hour period.

A monthly paid employe may or may not work on his availability day. Whether he does or does not work on that day he is paid the same monthly

rate. What hours he may be required to work on his availability day depends upon the necessities of the Carrier's business. Claimant's availability day commences at 7:00 A. M. on Sunday to 7:00 A. M. on the following Monday. He is required to be available for work within that twenty-four (24) hour period and he is charged with the duty to keep the Carrier advised where he can be reached if and when he is needed. If he is not available when called the Carrier may deduct a day's pay from his monthly compensation. Inconvenience is not material to this issue (Third Division Award 13121). This Division has established the principle that a standby or availability day is twenty-four (24) hours commencing with the employee's regular starting time. See Awards 1485 and 1674.

Employees also contend that Carrier called Claimant's home on Sunday, December 27, 1964 at approximately 8:00 P. M.; that Claimant's wife answered the phone and said that her husband "would be back very shortly." The caller is then purported to have said, "Never mind, I will try and get Burmier." This issue was first raised by the Employees in the rebuttal submission. There is no evidence in the record that it was ever raised on the property. On February 16, 1965 Carrier wrote to Claimant and said, "You were called at home at about 8:00 P.M. and no answer was made to your phone. Due to the fact that you were not at home forced us to call employees who were on their rest days." This was never disputed until mentioned in the rebuttal. It may not now be considered.

There is no merit to the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1967.