

Award No. 6252

Docket No. 6117

2-L&N-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

(1) That Carman B. J. Campbell, Hazard, Kentucky was improperly compensated for work performed on his second rest day, May 11, 1970, and

(2) Accordingly, the Louisville and Nashville Railroad should be ordered to additionally compensate him for the difference between the rates of time and one-half and double time for his service (8 hours) on that date.

EMPLOYEES' STATEMENT OF FACTS: Carman B. J. Campbell is regularly assigned Tuesday through Saturday, 7 A.M. to 3:30 P.M., and is employed in the Car Shop at Hazard, Ky., by the Louisville and Nashville Railroad, referred to hereinafter as the carrier. The Shop is a 6 day operation with no carmen assigned to work on Sundays.

Mr. Campbell, hereinafter referred to as the claimant, worked all hours of his regular assigned work week from May 5 through May 9, 1970. He then worked 6 hours on May 10th as a result of a call from the miscellaneous overtime board and was paid for his service at the rate of time and one-half. On May 11, 1970, he was again called from the miscellaneous overtime board and worked a total of 8 hours on that date. However, the compensation he received was also at the rate of time and one-half due to the fact that the Carrier has contended that the work he performed on May 10th, his first rest day, was "emergency work".

The work performed by the claimant on both May 10th and May 11, 1970, the rest days of his assignment, consisted of routine repair work on freight cars which had been placed in the shop as a result of defects found by Car Inspectors. Further, the claimant did not repair any particular car or cars on either date. Instead, he was instructed to work the cars in the order in which they stood on the repair tracks, without regard to the type of defect for which

It seems to be the impression of employees that regardless of whether the work on the first and/or second rest day was because of an emergency, double time is still due. But this is not what the rule says. It states —

* * * except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof.

When claimant was called for the emergency work, in accordance with Rule 8(a), he was compensated under the call rule, Rule 7(d), which states —

Employees called or required to report for work and reporting will be allowed a minimum of 4 hours at straight time rates for 2 hours and 40 minutes or less, and will be required to render only such service as called for or other emergency service which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movements.

There, Article V was not applicable, and claimant has been properly compensated.

In conclusion, carrier submits it has shown there is no basis for the claim and, therefore, asks 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 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 waived right of appearance at hearing thereon.

Claimant in this case relies principally on Article V of the National Agreement signed at Washington, D. C. on April 24, 1970, captioned "Overtime Rate of Pay" which provides that:

"All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof."

Claimant worked on his second rest day, May 11, 1970, after having worked his full week's assignment in addition to working on his first rest day. For the second rest day, he was compensated at the time and a half rate, whereas he is demanding double time rate for that day.

Carrier had the obligation in this case to show that the work performed on either rest day was emergency work. An examination of the record fails to show that Carrier has fulfilled its obligations in this respect.

Claimant has satisfied the terms of the National Agreement by (a) working all hours of his assignment in the work week, (b) by working the first rest day of his work week and (c) by performing service that was not emergency work on either rest day. We will sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 3rd day of March 1972.