

Award No. 6282

Docket No. 6125

2-L&N-MA-'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, A. F. of L. - C. I. O. (Machinists)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That under the current Agreement the employees named below were improperly compensated for work performed on the dates and shifts as indicated:

1. H. H. Brannom, Jr., Apr. 13 — 2nd shift.
2. F. L. Banks, Feb. 23 — 1st and 2nd shifts; Mar. 2 — 2nd shift; Mar. 9 — 2nd shift; Mar. 16 — 2nd shift; Apr. 13 — 2nd shift.
3. G. L. Ramsey, Feb. 25 — 1st shift; Mar. 4 — 1st shift; Mar. 18 — 1st shift; Apr. 8 — 2nd shift; Apr. 15 — 1st shift.
4. G. E. Green, Mar. 3 — 1st and 2nd shifts; Mar. 17 — 1st shift.
5. J. C. Jakes, Mar. 15 — 2nd shift; Apr. 26 — 1st and 2nd shifts.
6. W. W. Mabry, Mar. 10 — 1st shift; Mar. 24 — 1st shift.
7. J. A. Tripp, Feb. 19 — 1st shift; Feb. 26 — 1st shift; Mar. 19 — 1st shift.
8. W. E. Anderton, Feb. 28 — 1st and 2nd shifts; Mar. 14 — 1st and 2nd shifts; Mar. 21 — 1st and 2nd shifts; Mar. 28 — 1st and 2nd shifts; April 4 — 1st and 2nd shifts; May 9 — 1st shift.
9. M. O. Medcalf, Feb. 22 — 2nd shift; Apr. 26 — 1st shift.
10. J. W. Western, Feb. 19 — 1st shift; Feb. 26 — 1st shift; Mar. 19 — 1st shift.

(b) That the Carrier be ordered to pay the Claimants an additional four (4) hours at straight time rate for each of the dates and shifts as shown above, as provided by Public Law 91-226, Memorandum of Agreement, Attachment No. 3.

EMPLOYEES' STATEMENT OF FACTS: The Carrier's second largest diesel shop is located at Nashville, Tennessee, in a section of the city known as Radnor. At this facility, diesel locomotives are repaired, maintained, inspected and serviced seven days a week, twenty-four hours a day. There are seventy-two machinists and machinist apprentices regularly employed there.

The Claimants, all machinists, are regularly assigned, as follows:

(Name)	(Days Assigned) (Shift)	(Rest Days)
Brannom	Tue. thru Sat. 2nd shift	Sun. and Mon.
Banks	Tue. thru Sat. 2nd shift	Sun. and Mon.
Ramsey	Thu. thru Mon. 1st shift	Tue. and Wed.
Green	Wed. thru Sun. 2nd shift	Mon. and Tue.
Jakes	Mon. thru Fri. 1st shift	Sat. and Sun.
Mabry	Tue. thru Sat. 1st shift	Sun. and Mon.
Tripp	Fri. thru Tue. 1st shift	Wed. and Thu.
Anderton	Sun. thru Thu. 2nd shift	Fri. and Sat.
Medcalf	Mon. thru Fri. 1st shift	Sat. and Sun.
Western	Fri. thru Tue. 3rd shift	Wed. and Thu.

The hours of 1st shift are 7:00 A. M. to 3:00 P. M. The hours of 2nd shift are 3:00 P. M. to 11:00 P. M. and the hours of 3rd shift are 11:00 P. M. to 7:00 A. M.

The period of time involved in this dispute is February, March, April and May of 1970. During this period of time the Claimants were called to work, from the overtime board, on the dates and shifts as indicated in (a) Dispute; Claim of Employees: Claimants responded and rendered service at those times, having previously worked their regular assignments and their first rest days. Thus when working on the dates and shifts (previously identified) they were working on their second rest day.

The Carrier compensated them at the penalty rate of time and one half. However, inasmuch as they were working on their second rest day, on work other than emergency work, and, being otherwise qualified, they should have been paid the double time rate as provided by the Agreement.

are too low to begin with. Overtime is worked regularly rather than occasionally.

This statement is emphatically denied by the carrier. If additional jobs were needed carrier would certainly establish such positions to eliminate the necessity for excessive overtime work.

The employees' bare statement that identical work is performed on overtime "day in and day out", it not in any way supported by the facts as the amount of overtime worked is very small considering the size of the work force at Radnor Shops.

There are two questions involved in this dispute:

1. Was the work of an emergency nature?
2. Were the employees compensated for the work involved under the call rule?

The answer to each question is "Yes", and in view of the fact that the employees have failed to show any tangible proof otherwise, the claims are without merit and should be denied.

All matters referred to herein have been presented in substance by the carrier to representatives of the employees, either in conference or correspondence.

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.

Claimants in this case had worked all the hours of the regular weekly assignment, had worked their first rest day and their second rest day, compensation for the latter second rest day being the subject of this dispute. Carrier compensated them for that day's work at the rate of time and a half, whereas claimants are demanding double time under the provisions of Public Law 91-226 enacted by Congress and signed by the President on April 9, 1970, the pertinent provisions of which are as follows:

"H. Rules changes effective as of the date of notification of ratification of this Agreement as follows:

4. Pay for service on second consecutive rest day as set forth in Attachment No. 3."

Attachment No. 3 states:

"All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regu-

larly assigned hourly or daily rated employe 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."

The Organization contends that all claimants qualify under the above provisions, that there were no emergencies involved and that claimants were generally doing the type of work which would normally be performed by them during their regular work assignment.

The Carrier maintains that these instances of work performed on the second rest day, were of an emergent nature and consequently for compensation purposes, came within the purview of the standard Call Rule. Under that rule all claimants were compensated for work performed at the time and a half rate.

We have examined the record before us and find Carrier's argument to the effect that this work constituted emergency work to be non persuasive. Carrier in the shifting burden of proof doctrine, had the obligation to show by substantial evidence that the work was emergent in nature. We find no such proof in this record. To the contrary, we agree with the Organization that the work was the type of work performed by claimants in their regular assignments. There may have been and indeed we are convinced that there may have been great pressure and a well-founded need for these men to have worked on their second rest day, but this falls far short of an emergency.

There appears to be mutual agreement by both litigating parties that the dates on which work was performed are correct, except for Claimant Western on March 19th. We will sustain all other claims as presented, and will sustain Claimant Western's claim for March 19th if that date can be satisfactorily verified at the local level insofar as Carrier is concerned.

AWARD

Claim is sustained in accordance with findings as expressed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 28th day of March 1972.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.