

Award No. 6304

Docket No. 6181

2-C&O-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph E. Cole when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Car Inspector E. L. Robinson was improperly compensated Sunday, May 17, 1970, (his second rest day of his regular work week) when only allowed time and one-half (1½) rate, in violation of National Agreement signed April 24, 1970.

2. Accordingly Robinson is entitled to be additionally compensated four (4) hours at Carmen's straight time rate in lieu of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, owns and operates a large facility at Martin, Kentucky consisting of Shop Track, diesel house and transportation yards, where cars are switched, repaired, and made ready for delivery to and received from surrounding coal mines, 24 hours a day, 7 days a week, where a number of carmen are employed and hold seniority under Rule 31 of the Shop Crafts Agreement. E. L. Robinson, hereinafter referred to as the claimant holds regular assignment as Car Inspector at Martin, Kentucky, second shift, hours 3:00 P.M. to 11:00 P.M.; work week Monday through Friday, rest days Saturday and Sunday. Claimant worked his regular assignment Monday through Friday, May 11, 12, 13, 14 and 15, 1970. Claimant was called and worked eight (8) hours first shift 7:00 A.M. to 3:00 P.M. on Saturday, May 16, 1970 (his first rest day) for which he was paid at time and one-half (1½) rate. Claimant was again called and worked eight (8) hours, second shift 3:00 P.M. to 11:00 P.M. on Sunday, May 17, 1970 (his second rest day) for which he was paid at time and one-half (1½) rate. The work performed by claimant on his rest days was exactly the same as performed during his regular work assignment, claimant worked on the shop track and also in the transportation yard when his services were required. The work performed by claimant on his two rest days was due to an influx of business account the coal mines operating on Saturday and Sunday, May 16

Martin on Sundays with any degree of regularity, positions would be established with Sunday as a work day which service would be paid for at straight time rate rather than at time and one-half rate as occurred in this case, because no carman was assigned on second shift and it was necessary to call two men on their rest day.

3. If the work performed by Claimant Robinson on Sunday, May 17, 1970, was not considered "emergency work" carrier certainly would have let the loaded coal cars remain unworked on Martin Yard until Monday, rather than go to the extra expense of calling two carmen to work second shift on Sunday and paying them at time and one-half rate; however, Carrier was required to move this coal expeditiously not only in the interest of giving good service to its customers but also because it has an obligation as a common carrier to do so. Additionally, the capacity of Martin Yard is such that cars must be moved promptly.

It is further Carrier's position that this claim fails on another count. The first sentence of Article V of the April 24, 1970, Agreement provides in part as follows:

"All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employe on the second rest day of his assignment * * *." (Emphasis ours.)

In the case of Claimant Robinson, "his assignment" as of May 17, 1970, was as follows:

Monday	3 P. M. to 11 P. M.
Tuesday	7 A. M. to 3 P. M.
Wednesday	7 A. M. to 3 P. M.
Thursday	7 A. M. to 3 P. M.
Friday	7 A. M. to 3 P. M.

It is Carrier's position that in order for Claimant Robinson to qualify for double time payment, he would have had to work the same assignment on Sunday, May 17, 1970, his second rest day, as he worked on the other days of "his assignment," Monday through Friday. Obviously, he could not do this because no one is assigned to work on second shift at Martin, Ky., on Sunday. Thus, the work performed by Claimant Robinson on Sunday, May 17, 1971, was not service performed on the second rest day of "his assignment" but was work performed on a shift which was not a part of any assignment. Accordingly, Robinson did not qualify for double time pay under the language of Article V, as claimed.

This claim is not supported by the provisions of Article V of the April 24, 1970, National Agreement and should 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.

1. There was no evidence of any emergency in the record on May 17, 1970.

2. The Claimant worked on his second rest day, May 17, 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 should have been compensated at double time rate for that day.

3. Claimant has satisfied the terms of the Agreement of April 20, 1970, Article Five by (a) working all hours of his assignment in that work week; (b), by working the first rest day of his work week and (c) by performing service which was not emergency work on either rest day.

4. The reasoning in Awards No. 6252 (John J. McGovern) dated March 3, 1972; No. 6282 (John J. McGovern) dated March 28, 1972 and Award No. 6383 (John J. McGovern) dated March 28, 1972, of the Second Division of the National Railroad Adjustment Board, is incorporated into this award by reference, as though re-written herein.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.