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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6334
Docket No. 6157
2-L&N-MA-'72

The Second Division consisted of the regular members and in addition Referee Robert G. Williams 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, Machinist J. F. Murphy (hereinafter called the Claimant) was improperly compensated for work performed on May 31, 1970.
- (b) That the Louisville & Nashville Railroad (hereinafter called the Carrier) be ordered to pay the Claimant four (4) hours at straight time rate for the service performed on May 31, 1970.

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.

Claimant herein had worked all the hours of his regular weekly assignment, had worked the first rest day and also worked the second rest day. Compensation for the second rest day is the subject of this dispute. Carrier compensated him for that day's work at the rate of time and one-half, whereas claimant is 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 on Attachment No. 3."

Attachment No. 3 states:

"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, 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 claimant, on his second rest day, was sent from Mobile, Alabama to Flomaton, Alabama to inspect, repair and test locomotive No. 2321, that was being used in switcher service at Flomaton and was due its regular monthly inspection and testing, and that no "emergency work" as referred to in Public Law 91-226 was involved.

The Carrier maintains that the work performed by claimant on his second rest day was of an emergent nature and, therefore, claimant was exempt from the double time provisions of the rule, time and one-half rate being properly paid.

We have examined the record carefully and find Carrier's argument to the effect that the work performed on Claimant's second rest day constituted emergency work not persuasive. Carrier had the obligation to show by substantial evidence that the assignment involved emergency work. We find no such proof in the record. The Carrier may have had good reasons for having the inspection and tests performed at Flomaton by claimant on his second rest day, but this falls short of proving an emergency. See recent Awards 6282 and 6283, involving the same parties, and Award 6252 involving the same Carrier.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killean
Executive Secretary

Dated at Chicago, Illinois, this 7th day of July, 1972.