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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6349
Docket No. 6195
2-AT&SF-EW-'72

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Atchison, Topeka and Santa Fe Railway Company
(- Eastern Lines -

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company did err and violate the contractual rights of Mr. R. F. Mayberry, when they failed to properly compensate him for services rendered on September 10, 1970 and
2. That, therefore, Mr. Mayberry be compensated for four (4) hours at his pro rata rate of pay.

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.

The Claimant, regularly employed as an Electrician by the Carrier at its Argentine Shops, Kansas City, Kansas had, up to and including September 5, 1970, an assignment calling for a work week of Monday through Friday, 8:00 a.m. to 4:00 p.m., Saturday and Sunday rest days. He successfully bid for an assignment with a Friday through Tuesday work week, 8:00 a.m. to 4:00 p.m., Wednesday and Thursday rest days. He assumed the new assignment and commenced working thereon on Sunday, September 6, 1970. He had worked six consecutive days, Monday through Saturday, August 31 through September 5, 1970, prior to starting on the new assignment. He worked Sunday, September 6, Monday, September 7 (Labor Day holiday) Tuesday, September 8, Wednesday, September 9, (first rest day of new assignment), Thursday, September 10, (second rest day of new assignment), Friday, September 11, 1970.

The dispute arises out of the payment by the Carrier to Claimant of time and one half his basic straight time rate for hours he worked on Thursday, September

10, 1970, the second rest day of his new assignment. Petitioner contends that Claimant was entitled to double time for work performed on September 10, pursuant to the following provision of the National Agreement of April 9, 1970 (Public Law 91-226):

"Attachment No. 3:

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, nor will it be paid for under the provisions hereof."

The Carrier argues that Claimant had failed to meet the requirements of the Rule in that he had not "worked all of the hours of his assignment in that work week", having begun on the new assignment midpoint in the work week, namely on Sunday, September 6, rather than at the beginning thereof, namely on Friday, September 4.

If the Carrier's position were sustained, the Claimant could be worked seventeen consecutive days without time off before being eligible for second rest day premium pay on the eighteenth day worked. It is inconceivable that this was intended by the above quoted proviso. It speaks of an employee working all assigned hours in the work week prior to his assigned rest days. It does not except work in other assignments from the computation of days worked for this purpose, for sound and plausible reason.

We note with interest the specific language of Rule 7(g) and (h), cited by the Carrier, which clearly exempts the Employer from premium pay for hours in excess of forty (40) in a week when such overtime is incurred due to an employee "moving from one assignment to another". The record shows that Petitioner recognized the application of this Rule with reference to Sunday, September 6, when Claimant started on his new assignment. No such exception is found in Attachment 3 of the April 9, 1970 Agreement and we are not empowered to provide one.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July, 1972.