

(Advance copy. The usual printed copies will be sent later.)

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6379
Docket No. 6229
2-C&O-CM-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman 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:

That Freight Car Painter, F. N. Kennedy, was improperly compensated Sunday, June 28, 1970 (his second rest day of his regular assigned work week) when only allowed time and one-half ($1\frac{1}{2}$) rate in violation of National Agreement signed April 24, 1970.

Accordingly Kennedy is entitled to be additionally compensated the difference between time and one-half ($1\frac{1}{2}$) and double time rate for twelve (12) hours and fifteen (15) minutes at Locomotive Painters applicable rate.

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's regular assignment was eight hours a day Monday through Friday with Saturday and Sunday as his rest days. It is not disputed that he was called from the overtime board to work on his first and second rest days after having, "worked all the hours of his assignment in that work week." The organization contends that this entitles claimant to double time for hours worked on the second rest day under Article V of the National Agreement dated April 24, 1970. Claimant was paid one and one half times the rate for the hours worked on both the first and second rest days.

Carrier rejected the claim on the ground that claimant's regular assignment was from 7 A.M. to 3 P.M. as a freight car painter whereas the work performed on the rest days was as a Locomotive Painter from 7 A.M. to 11 P.M. the first rest day, and from 7 A.M. to 7:15 P.M. the second rest day.

Carrier also rejected the claim on the theory that Article V of the April 24, 1970 agreement excludes emergency work from the double time payment. Carrier reasons that all call in work is emergency work pursuant to Rule 7 (c) of the Agreement, derived from Decision No. 222 Docket 475 of the United States Labor Board effective August 16, 1921. The Organization opposes the use of the emergency work theory before this Board because it was not raised or referred to on the property and is submitted now for the first time.

We believe that reference to emergency work in Article V of the April 24, 1970 Agreement, the Agreement relied upon by the Organization, opens the door to discussion of whether or not an emergency existed. However, the Organization is correct, in its Rebuttal P.3, where it contends that no double time payment would be possible if Carrier's theory was adopted.

The words "assignment" and "emergency" as used by the Carrier are incorrect. Article V of the April 24, 1970 Agreement requires only that claimant complete all the hours of his assignment during his regular work week and also work on his first rest day to qualify for double time on the second rest day. The emergency must be work necessary at the time which if performed at a later time would be too late to be of any value. On P.6 of Carrier's Submission the work is referred to as, "urgent" so that the unit could be used, "as soon as possible." This does not add up to an emergency, although it indicates priority sufficient to justify payment of overtime rates to get it done.

The opinions expressed on the facts of this case and the result reached are consistent with Second Division Award No. 6252, 6282, 6283, and 6304.

A W A R D

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

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