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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6406
Docket No. 6215
2-N&W-EW-'72

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. The Norfolk and Western Railway Company violated Public Law 91-226 enacted into law on April 9, 1970 when it failed to compensate Electrician R. Wilson of the Bellevue Shops Bellevue, Ohio at the double time rate for working his second consecutive rest day.
2. That accordingly, the Norfolk and Western Railway Company be ordered to compensate Electrician R. Wilson an additional four hours electrician's rate of pay, plus 6% interest from date of violation.

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 worked his regularly assigned hours for five successive days, Friday to Tuesday, from 11 P.M. to 7 A.M.: he then "doubled" through by working from 7 A.M. to 3 P.M. on the fifth day. He was called in to work from 11 P.M. Thursday night to 7 A.M. Friday, for which he was paid one and one half times his regular rate of pay. His two rest days were Wednesday and Thursday.

The Organization contends that Claimant worked on both of his rest days and hence was entitled to double time for the assignment on the second rest day. The Organization relies on Attachment #3 of Public Law 91-226 which 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, 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 issue herein is whether Claimant met the tests specified in Public Law 91-226 cited above: did he work all the hours of his assignment in the work week and did he work on the first rest day of his work week. The matter in dispute is whether the work which began at 7 A.M. on Wednesday was part of the first rest day.

Petitioner urges that Claimant worked on all seven calendar days and hence fulfilled the qualification of working the first rest day as required in Public Law 91-226. The Carrier denies that Claimant worked on his first rest day, and claims that the tour of duty involved was in reality a part of the regular fifth day of work.

This Board finds that the definition of the work day has long been held in this industry to be the twenty-four hour period beginning with the starting time of the employee's regular shift. This interpretation is recognized in the current Agreement in the final paragraph of Rule 6 which states:

"Except as otherwise provided for in this rule, all overtime beyond 16 hours' service in any 24 hour period, computed from starting time of employees' regular shift, shall be paid for at a rate of double time."

It is repeated as well in Rule 10 (d) of the Agreement. It follows as well that the rest day must have a definition consistent with the work day. In Second Division Award No. 1485 we said: "...a day is the twenty-four hour period immediately following the starting time of the daily assignment". (Also see among many awards, Second Division No. 1564, 6375; Third Division No. 9839, 13062; Fourth Division No. 737). We find therefore that the work beginning at 7 A.M. on Wednesday was work performed on the fifth day of work.

In its submission the Carrier requests that this Board authorize the deduction of ten days pay from Claimant as partial compensation for the costs of "processing a totally unfounded claim". Penalizing an employee retrospectively for filing a claim later found to be without merit, would radically change not only the grievance process but the relationship between the parties. This request must be denied as contrary to the Agreement as well as the law.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killean
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1972.