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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6510
SECOND DIVISION Docket No. 6328
2-CNO&TP-CM-'73

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. 21, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Cincinnati, New Orleans & Texas Pacific Railway Company

Dispute: Claim of Employes:

1. That Carrier violated Article V of the April 24, 1970 Agreement.

2. That accordingly, the Carrier compensate Carman H. B. Chamberlain and A. N. Eckler, Ludlow, Kentucky for the difference between double time rate and the time and one-half rate which they received for working eleven (11) hours on April 4, 1971, the second rest day of their assignment, plus an additional amount of six (6%) percent interest per annum.

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 were given due notice of hearing thereon.

Claimants were called in by Carrier on April 3 and April 4, 1971, their first and second rest days respectively, to perform repair work on two disabled pieces of equipment in Carrier's Shop located at Ludlow, Kentucky. They were compensated for the hours they worked pursuant to Rule 7 of the Controlling Agreement, namely, at the rate of time and one-half their regular hourly rate of pay. Petitioner argues that for the eleven hours claimants worked on April 4, 1971, they should have been paid at the rate provided for in Article V of the National Agreement between the parties hereto, dated April 24, 1970, which reads in part:

> "...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'..."

Carrier avers that the work involved was properly paid for in that it fell within the exception set forth in the above referred to Article V which reads:

> "...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."

Petitioner's contention that the only "emergency work paid for under the call rules" is that provided in "Rule 10 - Overtime - Road Work" of the Controlling Agreement must be rejected. If that were intended by those who negotiated the April 24, 1970 National Agreement, it could have very readily and simply been shown. Furthermore, it is worthy of note that in Article II of the same agreement, the parties took great pains to spell out, for the purposes of that Article, what constitutes an "emergency". Their failure to do so for Article V implies that the general meaning of that word should be applied. In Third Division Award 11043 (Dolnick), the Board summarized the Findings in Awards faced with application of provisions of agreements in which the word "emergency" is a factor as follows:

> "The Agreement does not define 'emergency'. There are many definitions contained in Awards of this Board. None are all-inclusive and they cover many contingencies. In Award 7403 (Larkin) we said that emergency situations involve 'acts of God, possible loss or damage to property, and other such emergencies beyond the control of the Carrier,' (Emphasis ours.) We reviewed several previous definitions in Award 4354 (Robertson) which variously stated that an emergency ' is suggestive of a sudden occasion; pressing necessity; strait, crisis. It implies a critical situation requiring immediate relief by whatever means at hand,' (Emphasis ours.) In Award 10839 we adopted the definition in Webster's dictionary which said that an emergency 'is an unforeseen combination of circumstances requiring immediate action'."

With these guidelines before us, it must be ascertained whether the claimants performed "emergency work" payable under the Call rules of the Controlling Agreement on April 4, 1971. In Award 5484 (Dugan) of this Division, we stated:

> "In asserting that an 'Emergency' existed, carrier thus is raising an affirmative defense, and the burden is upon Carrier to prove such defense by competent evidence. ... Mere assertions cannot be accepted as proof. ..."

This was reaffirmed in our recent Awards 6252, 6282, 6283, 6304, 6334, 6378, 6379, and 6380.

There is no disagreement that the two engines that the Claimant were called in to repair on April 4, 1971 arrived at Ludlow in a defective condition on the morning of that day. Carrier's statement that this equipment was needed, in safe working condition within a short period of time if it were to fulfill its obligation to transport freight out of Ludlow, was not controverted by Petitioner. It was established that delay in the repairs would have had an impact upon Carrier's ability to meet its operational requirements on the following day and in fact, the equipment was put into necessary service within twenty-four hours after completion of Claimants' work thereon.

This record narrowly satisfies the criteria established to satisfy the invoking of the exception set forth in Article V of the April 24, 1970 National Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1973.