

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien 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
(- Coast Lines-

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated Mr. W.E. Sandell's contractual rights by failing to properly compensate him for services rendered on his second restday.
- (2) That, therefore, Mr. Sandell be compensated at the rate of time and one/half ($1\frac{1}{2}$) his regular rate of pay for each Friday that he rendered service but did not render service on his first restday.
- (3) That he be compensated at double time his regular rate of pay for each Friday he rendered service and had rendered service on his first restday.
- (4) That this is a continuing claim commencing sixty (60) days prior to original date of filing.

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 is the occupant of a regular Rest Day Relief Position assigned to work Fridays 7:00 A.M. to 3:00 P.M., Saturdays and Sundays 3:00 P.M. to 11:00 P.M., Mondays and Tuesdays 11:00 P.M. to 7:00 A.M. with rest days Wednesdays and Thursdays. It is the Organization's contention that service performed by claimant during the period 11:00 P.M.

on Thursday and 11:00 P.M. on Friday constituted service on claimant's second rest day and he should have been compensated therefor at the appropriate overtime rate which is either time and one-half or double time depending whether service was performed by claimant on the first rest day of his assignment. The Organization's argument is premised on the following: that claimant's fifth work day of his work week began at 11:00 P.M. on Tuesday and ended 24 hours later at 11:00 P.M. on Wednesday, at which time his first rest day began. His first rest day lasted 24 hours and ended at 11:00 P.M. on Thursday. At that time his second rest day began and terminated 24 hours later at 11:00 P.M. on Friday. And since claimant performed service from 7:00 A.M. to 3:00 P.M. on Friday, such service they conclude, was performed on claimant's second rest day and should be paid for at the appropriate overtime rate.

While it is true that service performed by an employee on his second rest day is to be compensated at the overtime rate by virtue of Rule 7(h) of the August 1, 1945 Agreement, and attachment No. 3 of the April 9, 1970 Agreement, we do not consider the service performed by claimant on the Friday of his regular assignment as having been performed on his second rest day.

With the advent of the 40 Hour work week on September 1, 1949, Carrier was obliged by virtue of Rule 1(i) of the Shop Crafts' Agreement to establish regular relief assignments with 5 days of work and 2 consecutive rest days with the proviso that assignments for regular relief positions may on different days include different starting times. This is what Carrier did in establishing claimant's Rest Day Relief Position here. And it necessarily followed that when claimant's position was assigned with different starting times, this might cause the second rest day thereof to terminate prior to the expiration of a 24 hour period at commencement of the new work week.

It is imperative to note that the terms of a collective bargaining Agreement must be construed as a whole. And while at first blush there appears to be conflicting provisions in the applicable Agreement now before us, such is not the case. All contracts provide for establishment of a 40 Hour work week with compensation therefor to be at the straight time rate. Claimant's position was created in accordance with such a 40 Hour work week Agreement, although it was established with different starting times on different days by virtue of Rule 1(i). When claimant commenced work on Friday at 7:00 A.M., he was working on the first day of his assigned 40 Hour work week and he was entitled to compensation therefor at the straight time rate since this service was performed within the hours of his regularly bulletined assignment. Neither Rule 7 nor Attachment No. 3 of the April 9, 1970 Agreement applied since claimant's second rest day had terminated at 7:00 A.M. on Friday when claimant began the first work day of his assignment. There is no indication that claimant worked in excess of 40 hours in any one week.

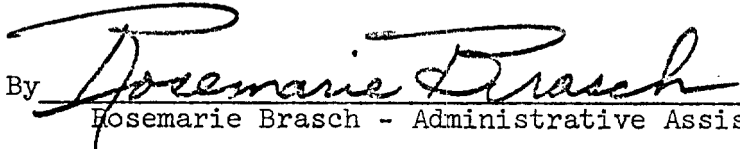
Finally, it should be noted that neither Second Division Award No. 6406 nor Fourth Division Award No. 2987, relied on by the Organization, are applicable here. Those Awards did not involve a relief assignment with different starting times on different days. Rather they involved regular assignments with uniform starting times each day. Finding no support for the Organization's position either by contract or precedent the claim shall therefore be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February, 1975.