

The Second Division consisted of the regular members and in addition Referee C. Robert Roadley when award was rendered.

Parties to Dispute: (System Federation No. 162, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company violated the provisions of Rule 8 of the controlling agreement when they refused to allow payment for two hours and thirty five minutes overtime work performed by Equipment Installer H. G. Robinson on Sunday, May 4, 1975, Claimant's assigned rest day.
2. That, accordingly, the Southern Pacific Transportation Company be ordered to compensate H. G. Robinson for the two hours and thirty five minutes at the time and one-half rate for work performed on his assigned rest day, Sunday, May 4, 1975.

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 a Radio Equipment Installer, which is a monthly rated position. His regular assignment is 8:00 a.m. to 5:00 p.m., Monday through Friday, on stand-by Saturday, with Sunday being his regular assigned rest day. Claimant received a call from the Carrier at 11:55 p.m. on Sunday, May 4, 1975, to assist another Equipment Installer in clearing the pneumatic tube system. The work for which he was called was completed at 2:30 a.m., Monday, May 5, 1975. The claim is for 2 hours and thirty five minutes at the overtime rate account having allegedly performed service on his rest day.

Petitioner has submitted a number of Awards in support of his position that an employee's rest day commences at the same time as does the employee's work day and continues for the immediate 24 hours thereafter. Therefore, on that basis, Petitioner argues that claimant's rest day began at 8:00 a.m.

on Sunday and ended at 8:00 a.m. the next day, Monday. (Page 10 of Employees Submission) Petitioner then avers that since claimant was called at 11:55 p.m. on his rest day and performed service he should have been compensated under the provisions of Rule 8 - Overtime and Calls, of the Agreement. No effort was made by Petitioner to determine the actual time claimant reported for work after having received the subject call nor does claimant's time slip establish that fact.

Petitioner has based his claim on the alleged violation of Rule 8, which reads in pertinent part as follows:

"Employees called or required to report for work and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less."

The complete record shows, however, that there are other Rules in the Agreement that have application to the subject dispute. We note the following:

"Rule 10. Regularly Assigned Road Work,
Monthly Basis

Employees regularly assigned to perform road work may be paid on a monthly basis which will compensate for all services performed except as hereinafter provided.
....." (emphasis added)

"..... Rules applicable to other employees of the same craft or class shall apply to service on such assigned rest days."

We also take note of the existence of a "special agreement" signed by the Organization General Chairman and the Manager of Labor Relations, dated August 23, 1972. That agreement states, in pertinent part, as follows:

"In re: Application of Rule 12, Agreement of April 16, 1927, and Rule 10, Agreement of January 1, 1968, and their application to monthly-rated employees under such contract agreement.

In our conference today, we discussed the proper application of Rule 10, Regular Assigned Road Work, Monthly Rates, of the Equipment Installers, Telephone, Telegraph, Linemen's Agreement of January 1, 1968, and Particularly the rest day provisions of such rules.

It was understood that the rest days of such employees will begin at 12:01 AM and will continue twenty-four (24) hours thereafter until 12:00 Midnight." (emphasis added)

It is clear that the foregoing establishes that claimant's rest day begins at 12:01 A.M. and ends at 12:00 Midnight, rather than the 8:00 A.M. to 8:00 A.M. concept alleged by Petitioner.

Additionally, we find nothing in the Agreement that supports the thesis which Petitioner alleges to the effect that, under the call rule, payment of overtime begins when an employee receives a call rather than when such employee actually arrives at his place of duty.

Since there is no showing in this record that Claimant actually performed service on his rest day and for the other reasons herein we will deny the claim.

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 11th day of March, 1977.