

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Electrical Workers)
 { Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated the controlling agreement when Communications Maintainer L. J. Byrne was denied full payment for services rendered on February 26, 1977.
2. That, accordingly, the Carrier be ordered to additionally compensate the aforementioned Communications Maintainer for eight hours at the straight time rate of \$7.17 per hour, i.e., \$57.36.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Communications Maintainer L. S. Byrne was called out on his rest day to cover a job off district. When submitting his time sheet for that day, the claimant put in for two-and-one-half times his daily rate. The carrier denied the two-and-one-half times rate and, instead, authorized payment at time-and-one-half. The organization filed a claim for one additional day's pay at the straight time rate, alleging that the carrier had, by denying the claimant pay at two-and-one-half times his rate, violated a past practice.

The carrier responded by claiming that no systemwide past practice on this issue exists and that the claimant is covered for pay purposes in this instance under Rule 3 (C) of the controlling agreement. The agreement specifies that employees will be paid only time-and-one-half for such work.

This case presents to the Board the classic dispute of what constitutes a legitimate past practice. The Board has, over a long period of time and in a long line of awards, characterized a legitimate past practice that has contractual significance as one that is long standing, is mutually understood and acceptable, and is systemwide. It is also axiomatic to this Board that the party raising the affirmative argument that a past practice exists has the burden of proving,

by facts and testimony, that there is indeed such a practice and that it meets the criteria set forth above. On numerous occasions, this Board has declared that erroneous payments of monies cannot serve to establish these payments as a practice that must forever be continued. The organization in the instant case has fallen short of carrying its burden of establishing that a systemwide practice of paying double time and one-half for rest days work off district exists.

The record specifies four incidents where Maintenance Electricians were paid two-and-one-half times their daily rate for out-of-district work on rest days. These four payments took place in less than one year, from September 1975 to July 1976. Communications Maintainers were established in 1959 on carrier's property. Four instances in which such payments were made since 1959 do not provide a sufficient basis on which to conclude that a legitimate past practice exists on this carrier. The organization has also not demonstrated that the practice, if it does exist, is systemwide. Four examples at one location on the railroad does not meet the test of a systemwide policy. This Board has stated that erroneous payments of money by operations officers of the railroads do not serve to bind the official authorized to make and interpret agreements about these payments as a practice that must continue.

The carrier's argument that the previous payments of the two-and-one-half times the rate for out-of-district rest day work were in error is persuasive.

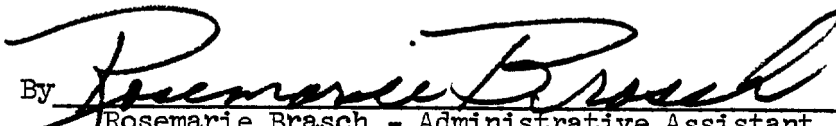
Absent words in the controlling agreement to authorize two-and-one-half times the regular rate when a Communications Maintainer works out of region on his rest day and absent the existence of a bona fide past practice on this carrier's property, this Board must deny the instant claim.

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 16th day of April, 1980.