

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mr. Bursese when they failed to properly compensate him for services rendered on Thursday, June 15, 1978 and Friday, June 16, 1978.
- (2) That, therefore, he be compensated twelve (12) hours at his pro rata rate of pay.

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 an Electrician regularly assigned to a shift from 8 a.m. to 4 p.m. with rest days on Thursday and Friday. Along with a number of other employees, the Claimant was directed to attend an electricians' training school for a period of one week, and he complied. The school was in session from 8 a.m. to 4 p.m., Monday through Friday. The Claimant was paid at straight-time rate of pay for this training program.

The Organization argues that the Claimant should have been paid at the rate of time-and-one-half for Thursday and double time for Friday, claiming that this is required by Rule 13, which reads in part as follows:

"RULE 13

OVERTIME:

All work on holidays, rest days, or outside of regular bulletined hours will be paid for at the rate of time and one-half except as may be provided in rules hereinafter set out.

(a) Service performed by regular assigned hourly or daily rated employees on the second (and third) rest day of their assignments shall be paid at double the basic straight-time rate provided that they have worked all the hours of their assignment in that workweek and have worked on the other rest days of their workweek, except that emergency work paid for under the call rule (Paragraph (c) hereof) will not be counted as qualifying service under this rule nor will it be paid for under the provisions hereof..."

Arguments by the Carrier as to de minimis and equitable estoppel are unconvincing. As to the merits, the Carrier argues principally that the training sessions are not properly encompassed by the words "work" or "service" as employed in Rule 13 and that premium pay for the two days in question is thus not required.

By its actions, however, the Carrier concedes the Claimant's entitlement to straight-time pay for this week of training, and so the various awards cited by the parties in reference to any wage payment for such time need not be reviewed.

Further, reference to cited cases as to whether employes should be paid (and at what rate) for traveling to instruction programs, disciplinary investigations or participation in legal proceedings are also not dispositive of the issue here. Nor does this involve periods of training in addition to the number of hours in a week normally assigned.

It is further noted that the claim does not encompass a demand for payment on Saturday or Sunday of the week of training, which days would otherwise have ~~been part of~~ the Claimant's regularly assigned schedule.

The particular question here, as the Board views it, is quite different. It may be stated this way: For the specific purpose of one week of training, during which the employe receives pay for the regular number of hours he would otherwise have worked, may the Carrier change the employe's schedule from five days with rest days of Thursday and Friday to a week running Monday through Friday?

It is understood, as emphasized by the Organization, that the employe has certain rights to the regular schedule to which he is assigned, at least in preference to other employes of the same classification. But the Board finds no rule cited which would prevent the Carrier from directing the employe to adjust his schedule of hours for one week in order to participate with others in the training program. This indeed represents a change in rest days for one week for the employe. However, the Board finds (and the Organization has cited) no rule to prohibit this for the limited purpose involved herein.

Once this is established, the question of premium pay for rest days (i.e., days beyond a five-day schedule) becomes moot.

A W A R D

Claim denied.

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Award No. 8986
Docket No. 8456
2-NRPC-EW-'82

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of March, 1982.