

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Louisville & Nashville Railroad Company violated the current controlling Agreement, when they improperly paid Claimant at time and one half rate instead of double time rate for working his second rest day.
2. That accordingly, Louisville & Nashville Railroad Company be ordered to compensate Claimant for four hours at straight time rate.

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 Electrician L. R. Kelsey held a first-shift Monday through Friday assignment at Carrier's South Louisville Shops. He was summoned to appear in Circuit Court at Louisville, Kentucky to serve as a juror for one week beginning Tuesday, January 31, 1978, and he was released from his assignment with the L&N to do so.

Electrician Kelsey's earnings for each day during the work week involved are shown below:

	<u>WORKED</u>	<u>HOW PAID</u>
Monday, February 6	--	8 hours' pay at straight-time rate less \$5.00 received from the Court
Tuesday, February 7	8 hours	8 hours' pay at straight-time rate
Wednesday, February 8	8 hours	8 hours' pay at straight-time rate
Thursday, February 9	8 hours	8 hours' pay at straight-time rate
Friday, February 10	8 hours	8 hours' pay at straight-time rate

	<u>WORKED</u>	<u>HOW PAID</u>
Saturday, February 11	8 hours	8 hours' pay at time and one-half rate
Sunday, February 12	8 hours	8 hours' pay at time and one-half rate

On February 28, 1978, the International Brotherhood of Electrical Workers submitted claim in behalf of Electrician Kelsey for double time rate of pay for Sunday, February 12, 1978, in lieu of time and one-half rate of pay allowed for service performed on that day.

The Organization asserts "that the controlling Agreement does not contemplate that an employee will be penalized for performing his civic responsibility by serving jury duty. It is also our position that an employee will be compensated at double time rate for working his second rest day if he is compensated for a full forty hours for his regular work week and if he works overtime on his first rest day and is compensated for eight hours at time and one half rate".

The Carrier maintains that "claimant was properly paid for the date in question. He is not entitled to be paid at the double-time rate of pay for service performed on Sunday, February 12, 1978, because he did not work all the hours of his assignment in that work week".

The Parties acknowledge that in the instant case, the Board is being requested to interpret, apparently for the first time, a rule from the tentative National Agreement reached December 4, 1969.

The Parties rely principally on Article V - "Overtime Rate of Pay" of the National Agreement which provides:

"All agreements, rules, interpretations and practices, however established, are amended to provide that 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, 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." (Emphasis added)

Given the fact pattern of the instant case, it is also essential that Article III - "Jury Duty" be examined. This Article provides in pertinent part:

"When a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he shall be paid for actual time lost with a maximum of a basic day's pay at the straight time

rate of his position for each day lost less the amount allowed him for jury service for each such day excepting allowances paid by the court for meals, lodging or transportation, subject to the following qualification requirements and limitations:

- (1) An employee must exercise any right to secure exemption from the summons and/or jury service under federal, state or municipal statute and will be excused from duty when necessary without loss of pay to apply for the exemption.
- (2) An employee must furnish the carrier with a statement from the court of jury allowances paid and the days on which jury duty was performed.
- (3) The number of days for which jury duty pay shall be paid is limited to a maximum of 60 days in any calendar year.
- (4) No jury duty pay will be allowed for any day as to which the employee is entitled to vacation or holiday pay."

The language in Article V is clear and unambiguous. It establishes as a condition precedent that the overtime benefits provided shall be paid an employee "provided he has worked all the hours of his assignment in that work week". Even a reading of the language of Article III - "Jury Duty" in the way most positive to the Claimant's petition, does not modify the clear requirements of Article V. To be "paid for actual time lost from his assignment" (Article III) cannot be considered as meeting the condition that the Claimant "worked all the hours of his assignment" (Article V).

If jury duty was to be considered as an exception to this general requirement, then that concept should have been so written into the Agreement. The Board cannot amend or alter the clear words of the Agreement, for to do so would be to infringe upon the rights of the Parties and their negotiators.

The evidence before the Board is not in dispute. The Claimant was on jury duty on the first day of that particular work week. Consequently, he is found not to have "worked all the hours of his assignment".

The claim is denied.

A W A R D

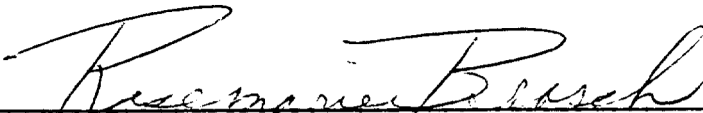
Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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Award No. 9015
Docket No. 8677
2-L&N-EW-'82

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1982.