

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

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri-Kansas-Texas Railroad Company violated the agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when Carman P. G. Brisciano was denied payment for service performed on his second rest day at double his proper pro rata rate.

2. That Carmen P. G. Brisciano be compensated for four and one-half (4 1/2) hours pay at his proper pro rata rate, in addition to the compensation already received for the date of April 21, 1985, his second rest day.

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 employes 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.

The Claimant was on a schedule of Monday through Friday, 7:00 A.M. to 3:30 P.M. with Saturday and Sunday off. The Claimant worked his first rest day April 20, 1985 from 7:00 A.M. to 4:00 P.M. and then worked his second rest day April 21, 1985 from 3:00 P.M. to 12:00 A.M.

The Organization claimed violation of Article V of the controlling agreement which states in pertinent part:

"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 his 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.

The foregoing provision is effective April 24, 1970."

The Organization argued the Claimant clearly worked the 7th day of his assignment and, therefore, is entitled to double time and they asked that he be compensated for 4 1/2 hours pay at his appropriate rate. The Organization contended no emergency existed and even if it did, it did not eliminate the double time provision. The Claimant filled in for an absent employee, and this was clearly no emergency. The Organization cited Award 6334.

The Carrier argued that the Claimant had originally put in for time and one-half for the 9 hours that he worked on April 21. In any event, Article V contains an exception for "Emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will be paid for under the provisions hereof." The Carrier argued this instance was clearly an emergency under the exception contained in Article V.

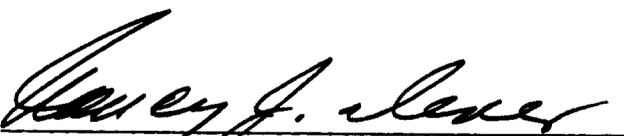
Upon complete review of the evidence, the Board finds that the Carrier has not proven its contention that an emergency existed. The Claimant clearly worked 7 days and even though the work on the 7th day was outside of his normal working hours, the provisions of Article V have been complied with and the Claimant is entitled to double time compensation and, therefore, the claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1988.