

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

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railroad Company

STATEMENT OF CLAIM:

1. That the St. Louis Southwestern Railway Company/St. Louis Southwestern Railway Company of Texas violated Rule 5 of the December 1, 1953 controlling agreement when they improperly deducted eight (8) hours pay from Radio Equipment Installer W. A. Talley's monthly rate for Saturday, April 5, 1986.

2. That, accordingly, the St. Louis Southwestern Railway Company/St. Louis Southwestern Railway Company of Texas be ordered to reimburse Radio Equipment Installer W. A. Taley the one day's pay, eight (8) hours, they deducted, and cease the practice of deducting a full day's pay without just and sufficient cause as given in the Agreement.

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, employed at the Kansas City, Kansas, facility, was contacted on Saturday, April 5, 1986, by the Houston Wire Chief to correct trouble on a data lease circuit. The Claimant was assigned to standby that day, but the Wire Chief's attempts to reach him were unsuccessful. A Carrier Supervisor, with the aid of other installers, made temporary adjustments that allowed the dispatchers to work trains until the following Monday when permanent repairs were made. As a result of not being available on his standby day, the Claimant was not paid for April 5, 1986. The Organization filed a claim on his behalf on May 6, 1986, which was declined at every stage of handling.

According to the Organization, the action of the Carrier was a violation of Rule 5, which reads in pertinent part:

"No overtime is allowed for service performed in excess of eight (8) hours per day. However, no time shall be deducted unless the employee lays off of his own accord, is furloughed, on leave of absence, his position is abolished, he is suspended for cause, or is displaced under the rules of this agreement....Employees filling these positions shall be assigned one (1) regular rest day per week, Sunday if possible, which will be the 24-hour period beginning at the ordinary starting time on work days."

The Organization maintains that the language was not intended, nor does it state, that an employee must be available preceding or following that 24-hour period, except during the regularly assigned hours of 8 A.M. to 5 P.M., on which his monthly rate is based. Further, in response to the Carrier's assertion that the incident on said date constituted an emergency situation, it cited the definition of "emergency" from Third Division Award 4354, which read:

"...It implies a critical situation requiring immediate relief by whatever means at hand."

According to the Organization, no "critical situation requiring immediate relief" existed on that day, but rather a problem resulted from a thrown switch on the previous evening.

The Carrier maintains that the Claimant was on standby on the day in question, and that the period of standby is a full 24-hour period, the same as a rest day is a full 24-hour period. Saturday is a day in which the Claimant must remain available for call, and if he is not available when called, the Carrier may deduct a day's pay from his monthly compensation. In support of this position, it cites the following two Second Division Awards, which read in pertinent part:

"Clearly it was intended that only holiday work was to be paid for on the calendar day basis, while the regular assigned days, standby days, Sundays, and rest days were to be paid for in the usual and ordinary manner, to-wit: That a day is the 24-hour period immediately following the starting time of the daily assignment. This being true, Claimant's standby day commenced at 8:00 a.m., Saturday, May 6, 1950, and ended at 8:00 a.m., Sunday, May 7, 1950."
(Second Division Award 1485)

"There is no disagreement that the monthly rate includes services performed on the availability date. Employees argue only that Claimant's availability day is not a 24-hour day, but only his same regularly assigned eight hours which he works Monday through Friday. The Carrier contends that the availability day is the full 24-hour period. A monthly paid employee may or may not work on his availability day. Whether he does or does not work on that day he is paid the same monthly rate. What hours he may be required to work on his availability day depends upon the necessities of the Carrier's business. Claimant's availability day commences at 7:00 a.m. on Sunday to 7:00 a.m. on the following Monday. He is required to be available for work within that 24-hour period and he is charged with the duty to keep the Carrier advised where he can be reached if and when he is needed. If he is not available when called, the Carrier may deduct a day's pay from his monthly compensation. Inconvenience is not material to this issue. This Division has established the principle that a standby or availability day is 24-hours commencing with the employees regular starting time." (Second Division Award 5248)

Based on the evidence presented before us, including the determinations cited in Second Division Awards 5248 and 1485, the Board finds that the Claimant should have been available for the 24-hour period of his standby day, and, therefore, denies the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1989.