

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12872
Docket No. 12616
95-2-92-2-166

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

- "1. That the Chicago and North Western Transportation Company violated the current Agreement, in particular Rules Nos. 7, 8 and 71 when they failed to properly compensate Traveling Mechanic Electrician Dale DeGrave, at double time penalty rate for work performed on December 23 and 30 of 1990 and January 6, 13, 20 and 27 of 1991.
2. That the Chicago and North Western Transportation Company be ordered to pay Traveling Mechanic Electrician Dale DeGrave the difference between the time and one-half (1.5) penalty rate and the double time (2) penalty rate, (\$6.93 an hour x 48 hours, for a total of \$332.64) for those days as listed above."

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.

It is the Organization's contention that Claimant should have been paid double time rather than the time and one-half rate for the work that he performed on various Sundays, his sole rest day each week, during December 1990 and January 1991. Claimant is a monthly-rated employee, as provided for under Rule 71:

"Rule 71 - Road Work - Monthly Basis

Monthly rates paid employees regularly assigned to road work represent a comprehended monthly hourage of 232.7 hours; no overtime is allowed for time worked in excess of eight hours per day; on the other hand, no time is to be deducted unless the employee lays off of his own accord.

These employees shall be assigned one regular rest day per week, Sunday, if possible. Overtime rules applicable to other employees coming within the scope of this Agreement shall apply to service performed on such assigned rest day. On the sixth day of the work week, employees will not be required to perform ordinary maintenance or construction work not heretofore required on Sundays and on holidays. Straight time hourly rate of these monthly rated employees shall be determined by dividing the monthly rate by 232.7.

The regularly assigned roadmen under the provision of this Rule may be used when at home point, to perform shop work in connection with the work of their regular assignments.

Where meals and lodging are not furnished by the Carrier, or when the service requirements make the purchase of meals and lodging necessary while away from home point, employees will be paid necessary expenses.

If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupants thereof being required to work excessive hours, the salary of these positions may be taken up for adjustment."

Carrier maintains that Claimant was paid properly under Rule 7, Payment of Penalty Rate (Time and 1/2 rate). The Organization contends that he should have been compensated in accordance with Rule 8:

"Rule 8 - Payment of Penalty Rate (Double Time)

(a) 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, 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 this Rule.

(b) An employee on duty in excess of 16 hours in any 24 hour period computed from the starting time of his regular assignment (which starting time is also applicable to his rest days) shall be paid at double the basic straight time rate on the minute basis for actual time worked until relieved from duty or until completion of 24 hour period, whichever first occurs.

An employee being paid double time at completion of a 24 hour period who is continued in service into the next 24 hour period shall continue to be paid at double time rate until relieved from duty."

This Board has reviewed the entire record of the case and must conclude that Carrier is correct in the position it adopts here. Carrier's position is succinctly summarized in a response to the Organization written by the Director-Labor Relations (Non-Operating) on June 27, 1991, which reads in pertinent part:

"Rule 71 provides that Claimant will have only one rest day. Rule 8 only applies to work performed on the second rest day. Therefore, Rule 8 is not applicable to employees covered by Rule 71 as they do not have a second rest day."

Rule 8 applies to regularly assigned hourly or daily rated employees. As a monthly rated employee, Claimant does not fall into that category. While Rule 71 states that "Overtime rules applicable to other employees coming within the scope of this Agreement shall apply to service performed on such assigned rest day,...." it is too great a stretch to conclude that the double time payment given to hourly or daily rated employees working on their second rest day applies to monthly rated employees working on their first, and only, rest day. Had the authors of the parties Agreement, who were experienced bargainers, intended such coverage, they would have clearly spelled out that understanding in Rule 8.

It appears from the record that Claimant was, in fact, paid double time for similar work on five occasions in the past. This, however, does not constitute a past practice, but rather must be attributed to an error on Carrier's part, as it acknowledges.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.