

Award No. 317
Docket No. 293
2-NYNH&H-EW-'39

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)

NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the electrical workers employed in the Electric Transmission and Communication Department, who were and are required to work either on designated relief days, Sundays, holidays, or days beyond their regular assigned bulletin hours, be compensated at punitive rates for all such days worked since the effective date of the current agreement as of April 9, 1937.

EMPLOYEES' STATEMENT OF FACTS: Prior to the effective date of the current agreement, the bulletin hours for these employes were as follows:

Electric linemen-construction gangs, 5 consecutive work days
per week
Electric linemen-maintenance wire trains, 7 days per week with
designated relief day
Combination test board men—7 days per week, with designated
relief day, and other
Combination test board men—6 consecutive days per week
Linemen-construction gangs—5 consecutive days per week
Cable splicers—5 working days over a spread of a 6 day week
Combination men—5 working days over a spread of a 6 day
week
Anchor bridge repairmen—5 working days over a spread of a
6 day week

The employes whose bulletin hours are five (5) working days spread over a calendar week of six (6) working days, are assigned a designated relief day between the first and last day of their regular assignment.

NOTE: The first day of the week may be any calendar week day.

The regular assigned bulletin hours of the employes coming within the respective classifications as specified above were and are being changed by bulletin notices at periodical times, even to the extent of having the hours changed week to week, from five to six days per week, and six days to seven days a week, and six days including holidays a week, and decreasing the hours likewise to reverse order through a procedure of posting bulletin notices.

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.

The parties to said dispute were given due notice of hearing thereon.

This is a claim for compensation at punitive rates of time and one-half for all days worked by the employes in the Electric Transmission and Communication Department for work performed on "designated relief days, Sundays, holidays or days beyond their regular assigned bulletin hours."

It is the contention of the employes that Rules 3 and 4 and parts of Rule 23 were violated by the carrier. The carrier insists that the rules in question were supplemented by an understanding entered into between representatives of the employes and the carrier prior to the signing of the rules of agreement in April, 1937.

The issue before the Division resolves itself into a determination whether the alleged agreement modified the general rules. It is clear that standing by themselves the rules sustain, in principle, the employes' contention. Were the rules modified by the understanding which, it was alleged, was reached prior to the adoption of the rules as an interpretation of the way the rules were to be applied?

The facts of the situation are that after weeks of negotiation, the carrier and the representatives of the union signed an agreement on April 9, 1937, containing the rules involved in this case. Just prior to the signing of the agreement, namely, on April 1, 1937, representatives of the Electric Transmission and Communication Department met with certain representatives of the union for the purpose of reaching an understanding as to the application of the rules then agreed to but not yet signed. The representatives of both sides met and conferred.

A stenographic report of the conference was made and appears as a part of the record in this case. The parties to the conference were not the same as those to the agreement and it must be concluded that whatever they agreed to would have to be within the frame work of the agreement finally signed on April 9. The conference could not make interpretations that would change the intent of one of the rules in the agreement. It must be concluded, therefore, that the rules should be applied as they appear in the agreement.

AWARD

Claim sustained and the determination of the back payments which are due is remanded to the parties, the same to be made in accordance with the rules.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1939.