

Award No. 973

Docket No. 892

2-Wab-EW-'43

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current Telephone and Telegraph Linemen's agreement, and the fifth paragraph of Rule 3 thereof, Lineman M. R. Fennell be awarded compensation at his pro rata daily rate for Sunday, July 26, 1942.

EMPLOYEES' STATEMENT OF FACTS: Linemen other than district linemen are generally known as Class B linemen (paragraph b, Rule 2) and are paid on a monthly basis.

The monthly rate of pay for Class B linemen is based on the performance of service to the carrier on 306 days per year; no additional pay being allowed for overtime worked.

Class B linemen are not assigned to perform any service on Sunday or on holidays.

Class B linemen are assigned to perform service on six days per week, Monday through Saturday, except weeks in which one of the holidays enumerated in Rule 3 falls.

The carrier assigned and instructed Class B Lineman M. R. Fennell to leave Decatur, Illinois, his headquarters, on Train No. 1, at 3:54 P. M., Sunday, July 26, 1942, for duty at Stanberry, Missouri, Monday morning, July 27, 1942. Mr. Fennell had to change trains at St. Louis and he arrived in Stanberry on Train No. 11 at 3:37 A. M., Monday, July 27, 1942.

For the fulfillment of this assignment which involved traveling for about twelve hours, Mr. Fennell has been denied any compensation therefor.

POSITION OF EMPLOYEES: That Lineman M. R. Fennell should be compensated for an additional day's pay for the performance of service to the carrier by traveling from Decatur, Illinois, to Stanberry, Missouri, on Sunday, July 26, 1942, on orders of General Foreman Judge.

Paragraph 5, Rule 3, of the current agreement, effective October 1, 1940, reads as follows:

"When Linemen referred to in Rule 2, paragraph (b), are required to work on Sundays and holidays, such Linemen will be paid at the pro rata daily rate for each Sunday or holiday worked in addition to the monthly rate provided by Rule 20."

As a matter of fact, in the handling of this case with the carrier the committee did not cite any rule of the agreement in support of their position. That fact alone is conclusive evidence that the alleged claim set up in the petitioner's ex parte statement of claim is without foundation under the provisions of the agreement, effective October 1, 1940.

Copy of the correspondence between the carrier and the committee in connection with this case as follows:

General Chairman Ramsey's letter of September 5, 1942;
Carrier's reply of September 14, 1942;
General Chairman Ramsey's letter of September 26, 1942;
Carrier's reply of September 30, 1942;

has been reproduced, copy of which is submitted and made a part hereof (marked carrier's Exhibit B.)

It is noted from the petitioner's ex parte statement of claim, as quoted by Mr. B. M. Jewell in his letter of March 31, addressed to the secretary of the National Railroad Adjustment Board, Second Division; and as quoted by Mr. Mindling in his letter of April 2; that the committee is now apparently relying on the provisions of Rule 3, fifth paragraph, to support their contention. That rule does not support the contention of the committee as Lineman Fennell did not work on Sunday, July 26, 1942, and, therefore, would not be entitled to compensation under the provisions of that rule account of traveling from Decatur, Illinois, to Stanberry, Missouri.

For the information of the Board, Lineman Fennell was furnished Pullman accommodations by the carrier on Train No. 11 from St. Louis to Stanberry on July 26, 1942.

The submission of this case to the Board is without question an attempt on the part of the committee to modify the rules of the agreement effective October 1, 1940, to an extent whereby the carrier would be required to allow linemen, such as referred to in Rule 2, Paragraph (b), of the existing agreement, compensation when traveling on Sundays, and, therefore, is in fact a request for a new rule; accordingly, the contention of the committee should be dismissed and the claim denied.

The foregoing statement is without prejudice to the position of the carrier that the alleged dispute referred to herein is not properly before or subject to a decision by the National Railroad Adjustment Board, Second Division.

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 waived right of appearance at hearing thereon.

As decided in Awards 784 and 789, the Second Division has jurisdiction over telephone and telegraph linemen, and the dispute here involved is properly before this Division.

Lineman Fennell is compensated on a monthly basis, and the service for which he is so compensated does not include service performed on Sunday and holidays. Furthermore, the fifth paragraph of Rule 3 of the controlling telephone and telegraph linemen's agreement expressly provides with respect to the claimant's class of linemen: "When linemen referred

to in Rule 2, Paragraph (b), are required to work on Sundays and holidays, such linemen will be paid at the pro rata daily rate for each Sunday or holiday worked in addition to the monthly rate provided by Rule 20."

Travel from place to place is an integral part of the work involved in this proceeding. Such travel is included in the service rendered on weekdays, and it must likewise be included in the service rendered on Sundays.

When the claimant was required by the carrier to travel on Sunday, July 26, 1942, so that he might perform work on the following day without loss of time through travel on that day, the scope of his monthly assignment was expanded thereby, and he is entitled to compensation therefor under the above-quoted provision of Rule 3 of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1943.