

Award No. 1155

Docket No. 1089

2-B&M-EW-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That Electrician E. R. Tessier is entitled to be additionally compensated in the amount of seven and one-half (7½) hours at one-half (½) time for his services from 8:00 A. M. to 3:30 P. M., Sunday, October 1, 1944, under the Memorandum of Agreement dated April 24, 1943.

JOINT STATEMENT OF FACTS: Everett R. Tessier, working at Guild, New Hampshire, on September 30, 1944, October 1, 1944.

Tessier worked:

Tessier was paid:

Saturday Sept. 30, 1944:

8 A. M.—4:30 P. M.

8 hours at straight time 7½

4:30 P. M.—12 Midnight.

hours at 1½ time.

Sunday Oct. 1, 1944:

12 Midnight—12:30 A.M.

½ hour at 1½ time.

12:30 A. M.—8 A. M.

7½ hours at double time.

8:00 A. M.—3:30 P. M.

7½ hours at 1½ time.

Everett R. Tessier, Electrician, has his headquarters at Boston, Massachusetts. His regular bulletin hours are from 8:00 A. M. to 12 Noon and from 12:30 P. M. to 4:30 P. M. As provided for in the rules the position is bulletined Monday through Saturday.

POSITION OF EMPLOYEES: A great deal of care was exercised by the employes in the negotiation of the memorandum of April 24, 1943 to ensure the inclusion of proper language to cover just such a case as is herein involved. The employes believe that the carrier is fully aware of the meaning of the language used. The memorandum states plainly, with a minimum of wordage;

"All positions will be bulletined Monday through Saturday",

The employes intended and believe this to mean;

1. There can be no regularly assigned seven (7) day positions.
2. All positions must be six (6) day positions each week, no more and no less.

speaking, the computation of these sixteen hours starts at 8 A. M., and any time worked before then would come under the other rules of the agreement. Similarly, since 8 A. M. is the starting time of his next regular bulletin period any double-time accruing for work on Saturday night and early Sunday morning would stop at 8 A. M., the starting time of his regular bulletin period. Thereafter, all work performed on Sunday would be at the rate of time and a half for the first sixteen hours.

In view of the fact that the rate of pay for Sunday work is in a separate paragraph, and that throughout the rule the word "time" is used, it seems obvious that the hour for starting work on a regular day is the essential time.

There is a most significant difference in the wording of the first and second paragraphs of the memorandum. The last sentence of the first paragraph reads:

"After the sixteenth hour of service computed from the starting time of the employe's regular shift double time shall be paid for all service performed until the starting time of the next regular bulletin period." (Emphasis supplied.)

In the second paragraph the sixteen hours of service are "computed from the starting time of the employe's regular bulletin hours." (Emphasis supplied.)

There is no regular shift on Sundays, so that if the language of the first paragraph had been used in the second paragraph, the starting time would necessarily date back to the regular shift. By the different phraseology it is obvious that the parties were referring to the hour at which the employe would start work on a regular working day. Strictly speaking there could be no double time for Sunday work until after midnight—sixteen hours after the starting time—as the rule merely states that all service performed on Sundays shall be paid for at time and one-half rate and double time starts after sixteen hours computed from the starting time of his regular bulletin hours. Similarly, the double time ends at the starting time of his regular bulletin period.

The committee is trying to get the Board to strike out of the rule all reference to time and to write, by interpretation, a rule that was not contemplated by the parties, a rule that is not written in the memorandum, a rule so obviously unjust and impossible that the urging of it is unconscionable. It is hard to believe that the Board would let itself be used for such a purpose.

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.

This case involves the interpretation of a rule, adopted April 24, 1943, the wording of which even the carrier admits is ambiguous. The essential part of the rule reads as follows:

"All employes governed by the agreement of April 1, 1937, between System Federation No. 18, Railway Employees' Department, A. F. of L., and the Boston and Maine Railroad shall be compensated at the rate of time and one-half for all service performed outside of regular bulletined hours on a minute basis, with a minimum of

one hour at the above rate for any such service performed. After the sixteenth hour of service computed from the starting time of the employe's regular shift double time shall be paid for all service performed until the starting time of the next bulletin period.

"On Sunday and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided that when any of the above holidays fall on Sunday, the day observed by State, Nation, or by proclamation shall be considered the holiday), all service performed by employes governed by the agreement of April 1, 1937, shall be compensated for at the rate of time and one-half for the first sixteen hours of service, computed from the starting time of the employe's regular bulletin hours, and at the rate of double time thereafter until the starting time of next regular bulletin period.

"All positions will be bulletined Monday through Saturday, Sunday and holiday service will be considered as overtime and paid in accordance with preceding paragraph."

The claimant, whose regular bulletined hours were from 8 A. M. to 12 Noon and from 12:30 P. M. to 4:30 P. M. from Monday through Saturday, worked continuously from 8 A. M., Saturday, September 30, 1944, to 3:30 P. M., Sunday, October 1. He was paid for his regular assignment on Saturday, 8 hours from 8 A. M. to 4:30 P. M. at straight time; 4:30 P. M., Saturday, to 12:30 A. M., Sunday, October 1, 8 hours at time and one-half; 12:30 A. M. to 8 A. M., Sunday, 7½ hours at double time; 8 A. M. to 3:30 P. M. on Sunday at time and one-half.

The controversy is over the pay for this last period. The employe claims that the rate should be at double time instead of time and one-half. The question is, when double time after sixteen hours of service starts and ends where such service extends into a Sunday on which day there are no regular bulletined hours. The carrier points out that the sixteen-hour period, if service were performed on week days, would end at the starting time of the next regular bulletined period, which in the case of this claimant would have been at 8 o'clock the following week-day morning. The carrier then argues that the same computation should be made in the case of Sunday. Even though there is no regular bulletin period on Sunday, the carrier says that such is the intent of the rule, because of the use of the words "starting time" instead of simply the word "start". In other words "starting time" is used instead of "start" to indicate that in the computation of the sixteen-hour period Sunday is to be treated as any other day, that "starting time" means the time the work would have started on Sunday if there had been a regular bulletin period on that day. This is perhaps a possible, as it certainly is an ingenious construction of the language used. But we cannot believe that those who drafted this rule had any such thought in mind. If that had been the intent it could easily have been made clear, and we would not have been involved here in a discussion of the difference between "regular bulletin hours" and "regular bulletin period", as those words are used in the second paragraph of the rule. This difference, if it has any significance, seems to us to be that "starting time of the employe's regular bulletin hours" more aptly describes the starting time of the period and "starting time of next regular bulletin period" its end.

In our opinion the language of the rule as applied to the claimant provides that the sixteen hours of service, during which double time should be paid, commenced sixteen hours after the starting time of his regular bulletin hours on Saturday and extended to the starting time of his next regular bulletin period on Monday.

This construction does no violence to the language used and is certainly in accord with the spirit of the agreement. Here is the case of a man ordered to remain on his job at the end of his week's tour of duty, who works continuously for thirty-one hours, fifteen and a half of which are on his day of rest. To be sure the carrier concedes that he is entitled to time and one-half

for all work performed on Sunday. But is there any reason why his double time, which admittedly commenced at 12:30 Sunday morning, should end at 8 A. M. on that day unless such is the clear intent of the agreement? We do not think such intent appears.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1946.