

Award No. 1426

Docket No. 1347

2-AA-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 77, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE ANN ARBOR RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement, particularly Rule 34 thereof, the following carmen are each entitled to an additional day's pay at the applicable rate on each of the dates as follows:

L. F. Sanders, August 8 and 15, 1948 and February 6 and 13, 1949.

H. Cromer, August 8 and 15, 1948.

M. Hettinger, January 9 and 16, 1949.

EMPLOYEES' STATEMENT OF FACTS: L. F. Sanders, employed as carman at Owosso, Michigan, was assigned to temporarily fill the position of the car foreman at that point from August 2 to August 15 (inclusive), 1948, and was paid therefor, one (1) day at the car foreman's rate on each date except Sundays, August 8 and 15, 1948. L. F. Sanders was again assigned to temporarily fill the position of the car foreman at Owosso, Michigan, from February 4 to 17 (inclusive), 1949 and was paid therefor, one (1) day at the car foreman's rate on each day except Sunday, February 13, 1949.

H. Cromer, employed as a carman at Toledo, Ohio, was assigned to temporarily fill the position of the car foreman at that point from August 2 to 15 (inclusive), 1948, and was paid therefor, one (1) day at the car foreman's rate on each date except Sundays, August 8 and 15, 1948.

M. Hettinger, employed as a carman at Frankfort, Michigan, was assigned to temporarily fill the position of the car foreman at that point from January 4 to 17 (inclusive), 1949 and was paid therefor, one (1) day at the car foreman's rate on each day except Sundays, January 9 and 16, 1949.

This dispute has been handled in accordance with the current agreement up to and including the highest designated carrier officer to whom such matters are subject to appeal with the result that this officer has declined to make any satisfactory adjustment.

The agreement effective July 1, 1921, as subsequently amended, in conjunction with Supplement A effective October 1, 1947 to the agreement

A—Rule 34 of the aforementioned agreement between The Ann Arbor Railroad Company and Ann Arbor System Federation No. 77 reads as follows:

"FOREMANSHIP, FILLING TEMPORARILY

A—Rule 34

Employees covered by this agreement assigned temporarily to fill the place of the foreman, (Other than Wrecking Foreman) will receive the same rate as paid the foreman and will assume the foreman's hours, responsibility, while so engaged."

It is necessary to refer to the rules of the agreements between the carrier and its employees in the mechanical department represented by The American Railway Supervisors Association, Inc., in order to ascertain the method of computing the compensation due to claimants for the service performed on the dates in question.

Article 10, paragraph (b), of Supplement A, effective October 1, 1947, to the agreement effective March 1, 1944, between the carrier and its employees in the mechanical department represented by The American Railway Supervisors Association, Inc. (carrier's Exhibit B), which was in effect on the dates referred to in the committee's ex parte statement of claim, reads as follows:

"(b) To compute the daily rate of monthly paid Foremen divide the monthly rate by the calendar days in the month and to compute the hourly rate divide the daily rate by eight (8)."

In accordance with A—Rule 34 of the agreement between the carrier and Ann Arbor System Federation No. 77, the claimants have been paid a day's pay, computed in the manner provided by Article 10 of the Foremen's Agreement, for each day they worked as a car foreman; and it is, therefore, obvious that the alleged claims set up in the committee's ex parte statement of claim are without basis under the rules of the agreements involved.

The contentions of the committee should be dismissed and the claims denied.

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.

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

The Supervisors' rules clearly contemplate that when a supervisor works six days he will be paid for the seventh, or rest day, and further that if he works on such rest day he will receive an extra day's pay therefor. While that agreement provides that the daily rate will be determined by dividing the monthly rate by the number of days in the month, effect must be given to the provision that he will receive seven days' pay for six days' work. Claimants were assigned to foremen's positions while the foremen were on vacation and under Rule A-34 of the Shop Crafts' agreement they:

"will receive the same rate as paid the foremen * * * while so engaged."

It would follow, therefore, that if they substituted for less than six days they would be paid for such days only at the rate determined by dividing the

monthly pay by the number of days in the month, but if they worked six days they would then be entitled to have a paid rest day, the same as the foremen for whom they were substituting.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1951.