

Award No. 1674

Docket No. 1577

2-MP-EW-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly denied Telephone Maintainer W. L. Schumacher compensation for traveling and waiting time while traveling from Poplar Bluff, Mo. to Wynne, Ark., from 9:45 P. M. Sunday, Feb. 11, 1951 to 5:00 A. M., Monday, February 12, 1951 to perform work of an emergency nature in clearing a short circuit.

2. That accordingly the Carrier be ordered to compensate the aforesaid Telephone Maintainer in the amount of seven (7) hours and fifteen (15) minutes traveling and waiting time at the applicable rate of pay.

EMPLOYES' STATEMENT OF FACTS: W. L. Schumacher, hereinafter referred to as the claimant, is employed as a telephone maintainer with headquarters at Poplar Bluff, Mo. The claimant is paid on the monthly basis as provided under the provisions of Rule 107 (c) and is assigned to a work week from Monday through Friday with Saturday as a stand-by day and Sunday, his regular rest day.

On Sunday, Feb. 11, 1951, he was called to the depot at Poplar Bluff, 7:30 P. M., to handle work of an emergency nature that had developed at Wynne, Arkansas. The claimant attempted to locate and clear the trouble by use of telephone. He was unable to clear the trouble and departed by train from Poplar Bluff at 9:45 P. M. arriving at Wynne, Arkansas at 4:58 A. M., Monday, February 12, 1951. The claimant performed work from 5:00 A. M. to 8:00 A. M. in the dispatchers office clearing a short circuit.

At 8:00 A. M., Feb. 12, 1951, the claimant returned to his regular work week hours consisting of 8:00 A. M. to 5:00 P. M.

The carrier properly compensated the claimant for the hours 7:30 P. M. to 9:45 P. M., Feb. 11, 1951, and for hours 5:00 A. M. to 8:00 A. M., Feb. 12, 1951. Therefore, the only question in dispute is the traveling and waiting time from 9:45 P. M., February 11, 1951, to 5:00 A. M., February 12, 1951.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

emergencies. The employe gets the benefit of the differential every month; the carrier should derive its benefit under the rule in emergencies, without additional cost.

In connection with the matter of the limits of the rest day, the carrier holds that under Rule 107 (c) these limits cannot be other than midnight to midnight. This rule says the monthly rate telephone maintainer will be assigned one regular rest day per week, Sunday if possible. In this case, Sunday was the assigned rest day.

We are aware of the findings in Award 1485 of the Second Division which ruled that all days except holidays began with the starting time of the regular assigned hours. This conclusion was reached from a wholly unsupported premise that a twenty-four hour day when applied to collective agreements is the twenty-four hour period immediately following the assigned starting time of the daily assignment. No authority, precedent, ruling, provision or interpretation was cited to substantiate that premise. Of course, if one can arbitrarily choose some premise to start with, most any conclusion can be reached but the carrier here holds that there is no provision in the controlling agreement that supports that premise and, therefore, the conclusions of Award 1485 cannot govern the decision in the instant dispute.

Our rule says "one regular rest day." It does not say parts of two days. One cannot speak of, think of, or express a period of twenty-four hours beginning at 8:00 A. M. without moving the mind over parts of two days — without running the twenty-four hour period from one day into another day. If the rule had meant that the rest day would be other than the period midnight to midnight on either Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday, it would have had to use different words than appear therein. The fact that it uses the term "Sunday if possible" is evidence that midnight to midnight was intended, and in fact expressed with respect to Sunday whether intended or not. Sunday just cannot, by any line of reasoning or argument, be part of Sunday and part of Monday.

Since midnight to midnight Sunday was the rest day of this claimant, he was not performing service on his rest day when he was traveling, waiting and working between midnight Sunday and 8:00 A. M., Monday, and under the agreement he is not entitled to any pay therefor other than the compensation in his monthly salary. There was traveling time on his rest day between 9:45 P. M. and midnight, Sunday but we believe we have shown that the claimant is not entitled to additional compensation for it. He has been paid four hours pro rata pay for the minor amount of work he did at Poplar Bluff trying to clear the trouble at Wynne by telephone; this is provided for in the agreement. He has been paid four and one-half additional hours pay for work at Wynne not provided for in the agreement. We feel he has been adequately compensated — certainly all and more than is required by the agreement.

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.

Claimant is a monthly rated telephone maintainer with Saturday as a stand-by day and Sunday as his regularly assigned rest day. On Sunday, February 11, 1951, he was called for duty at his headquarters at 7:30 P. M. to

do emergency work. It was necessary for him to leave his headquarters to clear the trouble. He departed at 9:45 P. M. and arrived at Wynne, Arkansas, at 4:58 A. M., on Monday, February 12, 1951. He worked at that point from 5:00 A. M. to 8:00 A. M. At 8:00 A. M., claimant returned to his regular work week hours of 8:00 A. M. to 5:00 P. M. There is no dispute concerning the compensation due for the hours 7:30 P. M. to 9:45 P. M. on February 11, 1951 and for the hours 5:00 A. M. to 8:00 A. M. on February 12, 1951. The dispute concerns the hours from 9:45 P. M. on February 11, 1951 to 5:00 A. M. on February 12, 1951. The precise question is whether or not compensation for traveling and waiting time is owing during the latter period.

Rule 107(c), current agreement provides in part:

“Telephone maintainers will be paid a monthly rate to cover all services rendered except as hereinafter provided. * * * Rules applicable to the classification of electrician shall apply to service for monthly rate telephone maintainers on their assigned rest day. * * *”

Carrier contends that the rules applicable to electricians are 3(b) and 4(d), current agreement. We think not. These are the overtime and call rules and do not purport to deal with waiting and travel time. That subject is covered by Rule 7(a), current agreement, which provides in part:

“An employe * * * when called for emergency road work * * * will be paid * * * straight time rate for all time waiting or traveling except on their rest days and holidays time and one-half will be paid for all time worked, waiting or traveling, * * *.”

This rule clearly requires that all time worked, waiting and traveling time is to be paid for at the time and one-half rate when performed on a rest day. It is only the rest day phase of the rule that has application to a monthly rated telephone maintainer.

The organization asserts that claimant's rest day commenced at 8:00 A. M. on Sunday and ended at 8:00 A. M. on Monday following. The organization cites Award 1485 in support of its contention. When a starting time is assigned, the employe's 24-hour day ordinarily commences with the starting time of his assignment. In Award 1485, the joint submission shows that the recognized starting time in that case was 8:00 A. M.

The record here shows that claimant's regular hours were from 8:00 A. M. to 5:00 P. M. and that his recognized starting time was 8:00 A. M. Carrier's submission shows this to be the fact. It is evident that claimant's work day began at 8:00 A. M. and consequently his 24-hour day begins at 8:00 A. M. of one day and ends at 8:00 A. M. the next as stated in Awards 1485 and 1564. It is clear therefore that claimant is entitled to compensation for the hours 9:45 P. M. to 5:00 A. M. following, as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of May, 1953.