

Award No. 2271

Docket No. 2031

2-LI-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 156, RAILWAY EMPLOYEES'
DEPARTMENT A. F. of L. (Electrical Workers)**

THE LONG ISLAND RAIL ROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. (a) That under the current agreement Electricians A. Cavargna, T. Colston, H. Mauer, N. Jones, J. McLaughlin, H. Brandow and E. Tvrdik were unjustly dealt with when the Carrier declined to compensate them for their required service outside of their regular bulletin hours on March 8, 1954.

(b) That under the current agreement Electricians A. Brazel, J. H. Sass, and E. R. Fromm were unjustly dealt with when the Carrier declined to compensate them for their required service outside of their regular bulletin hours on March 9, 1954.

(c) That under the current agreement Electricians E. J. Fitzgerald, R. C. Weber and W. H. Messina were unjustly dealt with when the Carrier declined to compensate them for their required service outside of their regular bulletin hours on March 10, 1954.

(d) That under the current agreement Electrician Helper E. J. Reinfurt was unjustly dealt with when the Carrier declined to compensate him for his required service outside of his regular bulletin hours on March 11, 1954.

2. (a) That accordingly the Carrier be ordered to compensate Electricians A. Cavargna, T. Colston, H. Mauer, N. Jones, J. McLaughlin, H. Brandow and E. Tvrdik for one hour at the overtime rate of pay for service required of them outside of their regular bulletin hours on March 8, 1954.

(b) That accordingly the Carrier be ordered to compensate Electricians A. Brazel, and J. H. Sass for one hour at the overtime rate of pay for service required of them outside of their regular bulletin hours on March 9, 1954.

That accordingly the Carrier be ordered to compensate Electrician E. R. Fromm for three hours at the overtime rate of pay for service required of him outside of his regular bulletin hours on March 9, 1954.

(c) That accordingly the Carrier be ordered to compensate Electricians E. J. Fitzgerald, R. C. Weber and W. H. Messina for one hour at the overtime

rate of pay for service required of them outside of their regular bulletin hours on March 10, 1954.

(d) That accordingly the Carrier be ordered to compensate Electrician Helper E. J. Reinfurt for one hour at the overtime rate of pay for service required of him outside of his regular bulletin hours on March 11, 1954.

EMPLOYES' STATEMENT OF FACTS: Electricians A. Cavargna, T. Colston, H. Mauer, N. Jones, J. McLaughlin, H. Brandow and E. Tvrdik are regularly assigned by bulletin on the 8:00 A. M. to 4:30 P. M. shift with headquarters at Bedford, Bay Ridge, New York. On March 8, 1954, the named electricians were ordered by the carrier at 2:30 P. M. to report to Jamaica, Long Island for instructions on the "Book of Rules", operating. They arrived at Jamaica at 3:30 P. M. and the instructions were concluded at 4:35 P. M., at which time they were released to return to their headquarters at Bedford.

Electricians A. Brazel and J. H. Sass are assigned by bulletin to the 8:00 A. M. to 4:00 P. M. shift with headquarters at Morris Park, Richmond Hill. On March 9, 1954 they were ordered by the carrier to report to Jamaica, Long Island for instructions on the "Book of Rules", operating. These instructions were concluded at 4:20 P. M.

Electrician E. R. Fromm, is bulletined on the 12:00 midnight to 8:00 A. M. shift with headquarters at Morris Park, Richmond Hill. On March 9, 1954 he was ordered by the carrier to report to Jamaica, Long Island, at 7:00 P. M. for instructions on the "Book of Rules", operating, and these instructions were concluded at 9:00 P. M.

Electricians E. J. Fitzgerald, R. C. Weber and W. H. Messina with bulletined positions on the 4:00 P. M. to 12:00 midnight shift with headquarters at Morris Park, Richmond Hill, on March 10, 1954, were ordered by the carrier to report to Jamaica, Long Island at 3:30 P. M. for instructions on the "Book of Rules", operating, returning to their regular assigned positions, at the conclusion of the instructions.

Electrician Helper E. J. Reinfurt is assigned by bulletin to the 8:00 A. M. to 4:30 P. M. shift with headquarters at Morris Park, Richmond Hill. On March 11, 1954 he was ordered by the carrier to report to Jamaica, Long Island, for instructions on the "Book of Rules", operating. These instructions were concluded, and he returned to his headquarters at 5:15 P. M.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective February 1, 1951 as it has been subsequently amended, applicable to the Maintenance of Way Department, is controlling.

POSITION OF EMPLOYES: The claimant electricians and electrician helper, are employees regularly assigned to road work in accordance with the provisions of Rule 9 of the agreement, a portion of which reads as follows:

"Employees regularly assigned to road work whose tours of duty are regular and who leave and return to home station daily, shall be paid continuous time from the time of leaving the home station to the time they return whether working, waiting, or traveling, exclusive of the meal period as follows: straight time for all straight time hours and overtime for all overtime hours at the home station."

The electricians named in the claim of the employees 1. (a) have their home station at Bedford, Bay Ridge and the traveling time between Bedford, Bay Ridge and Jamaica, Long Island is approximately one hour. The claimants listed in the claim of the employees under 1. (b), (c) and (d)

“* * * the current Agreement does not authorize payment for time used in attending class lectures on the rules. * * * No words are employed which can be construed to include class lectures on operating rules. Where a rule specifically names those within a class, except where it appears that they are listed for descriptive purposes only, an intention is indicated to exclude all those not mentioned. Consequently, * * * the Agreement does not authorize the payment of this claim before us. It has been held, and we think correctly so, that employees in qualifying themselves for positions and keeping themselves qualified, and to achieve promotion, are serving themselves primarily. Awards 1427, 2223, Third Division, N.R.A.B. To recover compensation for attending class lectures on the operating rules, such right must be found from the language of the Agreement. Awards 2828, 3302. This Board does not sit as a court of equity. We must interpret the applicable Agreement provisions as they were drawn by the parties. It would be a usurpation of authority to allow compensation to an employee where the Agreement does not authorize it. The remedy is by negotiation and not by faulty interpretation.

The quoted portion of Article VII does not authorize compensation for attending class lectures on rules. The statement therein contained that ‘employees notified or called to perform work not continuous with the regular work period’ precludes any notion that it was intended to include attendance of class lectures on operating rules. The word ‘work’ as herein used was never intended to have such a generic meaning as the Organization here contends. Awards 2508, 2512, 3230, 4181. If it had been so intended, there would have been no reason for including Article XVIII in the current Agreement.”

For the reasons aforesaid, it is the position of the Carrier that the instant claim is without merit and should, therefore, be 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.

Claimants were all members of electric traction gangs operating out of their respective designated headquarters. On the respective dates set out in the claim all except claimant E. R. Fromm were instructed to and required to attend instruction classes at carrier's main office at Jamaica in connection with the issuance of a new book of operating rules to become effective March 14, 1954, which classes either began immediately before and continued on into the claimants' regular tour of duty or started during their regular tour of duty and continued beyond it. Claimant E. R. Fromm, whose regular tour of duty was from midnight to 8:00 A. M. was called to and did attend such a class from 7:00 P. M. to 9:00 P. M. on Tuesday, March 9, 1954. Carrier refused to pay claimants for the time so spent immediately before or after their regular tour of duty and claim is made therefor on an overtime basis.

Ordinarily the words “work” or “service”, as used in collective bargaining agreements, do not include time spent by employees in qualifying themselves for positions, or in subsequently keeping themselves qualified therefor, or to achieve promotion. In doing so they are primarily serving themselves and unless it is expressly provided that it shall be considered as such it does not

constitute work or services for which they are entitled to be compensated. See Award 4250 of the Third Division and 1162 of this Division.

Claimants were all employes regularly assigned to road work. In regard to such employes the first paragraph of Rule 9, of the parties' then effective agreement provided:

"Employes regularly assigned to road work whose tours of duty are regular and who leave and return to home station daily, shall be paid continuous time from the time of leaving the home station to the time they return whether working, waiting or traveling, exclusive of the meal period as follows: straight time for all straight time hours and overtime for all overtime hours at the home station."

Rule 3 also provides:

"Employes' time will begin and end at designated assembling points established for their positions by advertisement bulletin."

It will be observed that Rule 9 does not limit such employes' pay solely to time during which service or work is rendered but also includes all time spent waiting or traveling from the time they leave their home station (headquarters) until they return thereto. We think the carrier is free to use the employes' time during such period in any proper manner that it sees fit but, having done so, is required to pay in accordance with the requirements of the quoted part of Rule 9.

But claimant Fromm does not come within this situation. His claim is for time spent so doing outside of his regular tour of duty. He must therefore rely on the fourth paragraph of Rule 5 of the parties' then effective agreement. It provides that when employes are notified or called to "perform services outside of their regular working hours" and "when the period of such service is not continuous with the regular working hours" he shall be paid therefor at time and one-half with a certain minimum. It will be noted this provision relates to the performance of "services" and we do not think what Fromm did was "services" within the meaning thereof.

In view of the foregoing we find the claims should be sustained except as to Electrician E. R. Fromm.

AWARD

Claims of all claimants sustained except that of Electrician E. R. Fromm, whose claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October, 1956.