

Award No. 2272
Docket No. 2036
2-A&S-TWUOA-CIO-'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:

**TRANSPORT WORKERS UNION OF AMERICA, C. I. O.
RAILROAD DIVISION**

ALIQUIPPA AND SOUTHERN RAILROAD COMPANY

EMPLOYES' STATEMENT OF FACTS: That Mr. F. Pieta held a position as Extra Car Repairman at the time this claim was filed.

That Mr. F. Pieta was paid the pro-rata rate of pay of Car Repairman for October 16, 1954, but under the controlling agreement and past practice he was entitled to the punitive rate of pay.

That the Railroad Division, Transport Workers Union of America, C.I.O. has a collective bargaining agreement, effective December 31, 1946, with the Aliquippa and Southern Railroad Company covering Maintenance of Equipment Department, copies of which are on file with the Board and is by reference hereto, made a part of the Statement of Facts.

That Mr. F. Pieta is a Maintenance of Equipment employe and that he held the position of Extra Car Repairman at the time this claim was filed.

POSITION OF EMPLOYES: It is respectfully submitted that the punitive rate of pay must and does accrue to the employe under Article 4, section (b) of the current agreement which reads as follows:

"AMENDMENT No. 22

Article 4—Section (b)
Saturdays, Sundays and Holidays

(b) Employes required to work on Saturdays and/or Sundays will be paid at the overtime rate of one and one-half (1½) times the pro-rata hourly rate except that employes necessary to the continuous operation of the Railroad and who are regularly assigned to work on Saturday and/or Sunday will be paid at the pro-rata rate. Employes assigned to work on Saturday and/or Sunday will be assigned days, or day off in lieu thereof; and if required to work on such assigned days off, they will be paid at the overtime rate of one and one-half (1½) times the pro-rata hourly rate. Insofar as practical, assigned days off shall be consecutive."

repairman in excess of forty hours at pro-rata rate in a workweek commencing on Monday.

Since the 1947 arrangement above referred to was made, the organization has never contended that the extra car repairman is not the proper man to fill such vacancies as occurred in this case. Until this claim was presented, they made no objection to the method of computing overtime during a workweek nor attempted to argue that Saturday and Sunday were assigned days off for the extra man.

It seems clear to us that, although this arrangement has never been formalized by written agreement, the past practice was so definite and of such long standing that it fully sanctioned the carrier's payment to Mr. Pieta for the week of October 11, 1954.

CONCLUSION

The carrier has shown that Pieta was correctly paid at the pro-rata rate for the time worked as car repairman and that he is not entitled to the compensation claimed. It is therefore respectfully submitted that the claim is not supported by the applicable agreement and should 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 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.

Extra Car Repairman F. Pieta claims that he worked on Saturday, October 16, 1954, one of his rest days, and that carrier only paid him for the service he rendered on that day at the pro rata rate applicable thereto when, by the terms of Article 4, Section (b) of the parties then effective agreement, he should have been paid at the overtime rate. He asks that we direct the carrier to pay him this additional overtime compensation for that day.

Effective as of July 29, 1954 carrier established the position of an "Extra Car Repairman" at its North Car Shop and Yard at Aliquippa, Pennsylvania. The starting times and assigned days off of this position were bulletined as "Various." Claimant, on October 1, 1954, by virtue of his seniority, displaced Mullins, the then occupant thereof, and thereafter held the position, at least up to and including Saturday, October 16, 1954, on which date he performed the 8 hours of service here involved. Claimant was obligated to accept the conditions of this position as they existed when he obtained it by displacing Mullins.

It is the carrier's thought that since the bulletin established no regular assigned days off that the occupant was, within the extent and meaning of Article 2 Section (e) of the parties then effective agreement, an "unassigned employe" whose work week would be a period of seven consecutive days, starting with Monday.

However we must look to how the carrier actually handled the work to determine if claimant had any certain rest days, for he was unquestionably an employe regularly assigned to a position. It appears the employe (here claimant) assigned to such a position (extra car repairman) reports for work at the North Car Shop each morning, Monday through Friday, to protect any vacancy for car repairmen that might arise in the Shop or Yard and, if there is no car repairman work for him to perform on any particular morning, he works as a laborer in the Shop at laborers' rate of pay. Otherwise

he is subject to call. We think the practice of handling such positions in this manner give them regular rest days of Saturday and Sunday. In view thereof we think payment for services that claimant rendered on Saturday, October 16, 1954, should have been paid for at the overtime rate.

AWARD

Claim sustained.

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.