

**Award 3445
Docket 3306
2-WAB-EW-'60**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy, when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYEES'
DEPARTMENT, A.F.L.-C.I.O. (Electrical Workers)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement System Installer J. B. Morris was improperly compensated for construction work performed at Detroit, Michigan, on Saturday, November 16, 1957.

2. That accordingly the Carrier be ordered to additionally compensate System Installer J. B. Morris in the amount of seven (7) hours at the straight time rate of pay for Saturday, November 16, 1957.

EMPLOYEES' STATEMENT OF FACTS: J. B. Morris, hereinafter referred to as the claimant, is employed as a system installer, in the Communications Department, of the Wabash Railroad Company, hereinafter referred to as the carrier. The claimant has an assigned headquarters at Montpelier, Ohio, and is compensated on a monthly basis. He is assigned to work Monday through Friday, with Saturday as a stand-by or subject to call day and Sunday as an assigned rest day.

On Saturday, November 16, 1957, the claimant was required to perform ordinary construction work at Detroit, Michigan. The carrier has refused to additionally compensate the claimant for the performance of ordinary construction work on the sixth day of his assigned work week.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective October 1, 1940, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant was required to perform construction work at Detroit, Michigan, on Saturday, Novem-

pensation on Sundays shall, effective September 1, 1949, apply to the sixth day of the work week."

is of no application to a determination of this dispute.

With regard to the second paragraph which the Forty-Hour Week Committee in its Supplement to Decision No. 33 directed be incorporated into individual agreements, reading:

"For employes who did not have a bulletined or assigned rest day as of March 19, 1949 ordinary maintenance or construction work not then required on Sundays will not be required on the sixth day of the work week after August 31, 1949."

That paragraph, due to the nature of the work performed, provides no support for the claim herein involved.

Furthermore, the 40-Hour Week Committee in its Supplement to Decision No. 33 further stated:

"The Committee further decides that the second paragraph of Article II, Section 2(d) reading:

'Such employes shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to other employes of the same craft or class shall apply to service on such assigned rest day.'

should be included in the revised agreement covering employes in the following cases.

Case No.		
Carrier	Organization	Railroad
W-559, SC-195	W-WAB-SC-TT-168a	Wabash
W-811, SC-256	W-WAB-SC-TT-209a	Wabash"

That clearly shows that the 40-Hour Week Committee recognized that system installers did not have an assigned rest day on March 19, 1949.

The committee failing to gain the inclusion of a rule providing an additional four (4) hours at the pro rata hourly basic rate of pay for system installers if required to work on the sixth day of the work week by decision of the 40-Hour Week Committee in its Supplement to Decision No. 33, has now presented this claim for an additional seven (7) hours at straight time (following an original claim for 10 hours at time and one-half) for work performed on Saturday, the sixth day of the work week, to this Division for decision in an attempt to gain a rule providing for such allowance through the medium of an award, regardless of the fact that the work performed on the Saturday claim date was work of a type which would have been performed on Sundays prior to March 19, 1949.

As the National Railroad Adjustment Board, Second Division, is without jurisdiction to promulgate or grant rules, 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 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.

Parties to said dispute were given due notice of hearing thereon.

Mr. J. B. Morris, employed as a system installer for the carrier on a monthly basis, worked on his stand-by day installing an Electronic Messenger. The organization asserts in its claim that he should be additionally compensated in the amount of seven hours at the straight time rate of pay for Saturday, November 16, 1957, which was his stand-by day.

The carrier denied the claim on the basis that the Electronic Messenger was installed on Saturday and Sunday so that this change would not disrupt, any more than necessary, its operation of its facilities. Carrier further contends that this was not "Ordinary Maintenance or Construction Work" as used in the Forty-Hour Week Agreement effective September 1, 1949.

We do not agree with the Organization that Award 1704 of this Division applies to the facts as presented.

The evidence in this case more clearly applies to the decision rendered by this Division in Award 1944, where it was agreed to the following:

"Employees admit that the work was necessary but assert there was no emergency and therefore it was maintenance and construction work not theretofore required on Sunday." We think the requisite for Sunday work before the Forty Hour Week rule was not emergency but urgency; not whether it had been foreseen but whether it could well be prevented.

The work here involved was not ordinary, but extraordinary, in that it was very seldom required and of necessity had to be performed on Saturday."

We agree with the carrier that Saturday and Sunday would be the proper time to make such a change in its System of Communications. This is a vital part of their operation, and on these days there would be much less need for communications between points on their lines as the traffic movement would not only be less but the employees requiring such service would be far less. We do not feel that this installation could be classified as an ordinary installation. It was a completely new method of handling messages and the evidence presented shows that the work performed by the claimant was for the "setting up and testing," not maintenance and construction.

This work was such that it would be seldom required and of necessity had to be performed when the installation would least affect the carrier's operation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1960.

DISSENT OF LABOR MEMBERS TO AWARDS NO. 3445 AND 3446

It has been clearly established that prior to September 1, 1949 Rule 2, Paragraph (a) and (b) of the agreement effective October 1, 1940 provided that linemen required to work on Sundays or any of the holidays designated in Rule 3 will be paid an additional four (4) hours at pro-rata hourly basic rate for such day or days. Decision No. 33 of the Forty Hour Week Committee provided:

“For employes who had a **bulletined or assigned rest day** as of March 19, 1949 conditions then applicable to **work and additional compensation on Sundays** shall, effective September 1, 1949, apply to the sixth day of the work week.”

The majority has ignored the intent of the controlling agreement rules and we must dissent from the erroneous conclusion and award of the majority.

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner

James B. Zink