

Award No. 3452

Docket No. 3391

2-Pull-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement The Pullman Company failed to compensate Electrician O. W. Bays at the time and one-half rate of pay for service performed outside of bulletined hours on May 22, 23, 24, 25, 26 and 29, 1958.

2. That accordingly The Pullman Company be ordered to compensate Electrician O. W. Bays the difference between the straight time rate of pay which they paid him for the service he performed on these days and the time and one-half rate that was due him.

EMPLOYES' STATEMENT OF FACTS: Electrician O. W. Bays was employed in the Baltimore District on May 22, 1958. Management advised him verbally that he would work from 9:00 A. M. to 5:30 P. M. with a 30 minute lunch period. He was permitted to work these hours on May 22, 23, 24, 25, 26, 27, 28 and 29, 1958. These hours were never bulletined in accord with Rule 23.

As a result, under date of July 17, 1958, a claim was submitted in behalf of Electrician Bays for time and one-half rate of pay for service performed outside of bulletined hours in accord with Rule 31.

Under date of August 6, 1958, Foreman A. Reeves rendered a decision paying Electrician Bays the time and one-half rate of pay for service performed on May 27 and 28, 1958, but denied the claim for this same rate of pay for service performed outside of bulletined hours on May 22, 23, 24, 25, 26 and 29, 1958.

In the Meany and Godsey cases, which cases are also cited by the organization, there was no doubt in the minds of the supervising foremen in the Louisville and Cincinnati Districts that the employes were qualified to perform the work incident to certain regular bulletined positions. Through error, however, the foremen failed to assign them on the dates that they should have been assigned and adjustment was made in their favor on that basis. Appeals Officer Dodds' letters of decision in these two cases appear on pages 9 and 10 of Exhibit J. In settling the claim in behalf of Electrician R. L. Meany, Louisville District, it was agreed between the parties that neither The Pullman Company nor the organization would consider the settlement as establishing a precedent or principle controlling in the handling or settlement of any pending or future claims. Similarly in Mr. Dodds' letters to Mr. McDermott, informing him that adjustments would be made in favor of Electricians M. Tetzlaff and J. Wirth, Chicago Western District, dated November 30, 1955, Mr. Dodds stated that claims filed in behalf of Electricians R. Kollath, H. R. Nelson, M. Tetzlaff and J. Wirth were being settled on a compromise basis and that it was understood the compromise settlement of the four claims "would not be considered by the Company or the Organization as establishing a precedent or principle controlling in the handling of any pending or future claims of a similar nature." A copy of Mr. Dodds' letter to Mr. McDermott dated November 30, 1955, setting forth the basis of the compromise settlement on the four claims appears on page 11 of Exhibit J.

In conclusion the company submits the organization has not assumed its burden of establishing facts sufficient to require or permit the allowance of its claim in behalf of Electrician Bays. Numerous awards hold the burden of establishing a claim is upon the one who asserts it. See Third Division Awards 4011, 2577, 5445.

CONCLUSION

In this ex parte submission the company has shown that during the period management considered that Electrician Bays was not qualified to perform the work incident to a regular bulletined position Bays was informed that his regular working hours would be from 9:00 A. M. to 5:30 P. M. Further, Bays was paid for the relief days he worked (May 27-28) at the rate of time and one-half. Also, the company has shown that the organization has not produced sufficient evidence to establish that Electrician Bays worked outside regular bulletined hours on the dates specified and is entitled to be paid at the rate of time and one-half. Finally, the company has shown that awards of the National Railroad Adjustment Board support management's position in this dispute.

The claim in behalf of Electrician Bays is without merit 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.

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

The claimant was employed as electrician in the Baltimore District. He worked May 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, June 1 and 2. Through error, he was not given his relief days (May 27-28). For each day worked he received 8 hours' pay at straight time rate, except for May 30 (Decoration day) he was paid 8 hours' holiday pay plus 8 hours at the rate of time and one-half, or a total of 20 hours. Later adjustment was made for the 2 relief days at the time and one-half rate.

We find that the foreman did not consider that claimant was qualified to fill the only open position (Position No. 1), so he assigned him to various duties on a day-to-day basis and advised him that his hours would be 9:00 A. M. to 5:30 P. M. with a 30-minute lunch period. On June 3, the carrier felt that he could properly perform in Position No. 2 and so assigned him.

The organization contends that he was performing services outside of bulletined hours and that he is entitled to the time and one-half rate under the provisions of Rules 23, 24 and 31.

The parties have a working agreement which provides (Rule 23) that "Working hours and lunch periods shall be bulletined" and when this is not done Rule 24 provides that "All service performed outside of bulletined hours will be paid for at the rate of time and one-half until relieved."

The evidence in this case shows that Mr. Bays worked for the carrier in the Washington district for a period of 7½ months and was furloughed. As a result of failing to respond to recall from furlough, his services were terminated. In the instant case Mr. Bays was paid at the time and one-half rate for work performed on his relief days, and straight time rate for all other days with the exception of May 30 (Decoration day), for which he was paid 8 hours' holiday pay plus 8 hours at the time and one-half rate for working the holiday.

We must agree with the Organization that Rule 23 was violated and that Rule 24 would apply to Mr. Bays' services with the company on the days claimed. It is true Bays was a new employe and his foreman had a right to pass upon his qualifications for the position that was bulletined but the position for which he was being trained should have been bulletined in line with the agreement. He was a qualified electrician.

AWARD

Claim sustained.

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.