

Award No. 3647
Docket No. 3593
2-P&LE-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard Johnson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O.
(ELECTRICAL WORKERS)**

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Electrician O. Zimmerman and some seven (7) other electrical workers were unjustly dealt with when they were improperly compensated for services performed when they were ordered to East Youngstown, Ohio, and required to remain at that point for the periods indicated below and thereafter:

December 17 to December 21, 1956, inclusive;
January 15 to January 18, 1957, inclusive;
January 21 to January 25, 1957, inclusive;
April 16 to April 19, 1957, inclusive;
April 22 to April 26, 1957, inclusive.

2. That electrical workers involved were paid for approximately eight (8) hours on each of the above mentioned dates. We are requesting that they be additionally compensated, at the applicable rate of pay, to the effect that they will be paid continuous time from the time of leaving home station until their return.

This has been a continuing dispute since December 17, 1956. Claim is hereby made on behalf of the electrical workers involved for continuous time from the time of leaving home station until they return for each violation subsequent to April 26, 1957.

EMPLOYES' STATEMENT OF FACTS: Electrician O. Zimmerman and the seven other electrical workers involved in the claim are regularly assigned to shop, construction and general electrical work, with headquarters at McKees Rocks, Pa., and with bulletined hours of 7:40 A. M. to 12:00 noon, 12:30 to 4:10 P. M.

On December 14, 1956, Electrician O. Zimmerman and 7 other electrical workers were ordered to report to Youngstown, Ohio, Monday, December 17,

The first paragraph of Rule 7 (a) sets forth the minimum time to be paid an employe who continues working beyond his regular working hours. (Rules 6, 10 and 14 provide for overtime payment otherwise).

The second paragraph of Rule 7 (a) provides a lunch period for an employe who continues to work beyond his regular work hours.

Sections (b) and (c) of Rule 7 apply to payments for calls.

Section (d) of Rule 7 applies to employes working in advance of regular hours.

Section (e) of Rule 7 sets forth when double time will be paid.

It is obvious from the foregoing that none of the paragraphs of Rule 7 are applicable to the claimants in the instant dispute; therefore the employes' contention that Rule 7 is applicable is without merit.

CONCLUSION:

The carrier respectfully submits that the meals and sleeping accommodations furnished by the carrier at its expense to the claimants properly met the requirements of Rule 14. Further, on each and every date that the claimants were relieved from duty for more than 5 hours, their continuity of service was broken under the provisions of Rule 14. They were also under pay during the time they were traveling between McKees Rocks and East Youngstown each week end.

The claimants were properly compensated in accordance with Rule 14 of the agreement. The claim is without merit and should be denied.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Claimants were regularly assigned to shop, construction and general electrical work, with headquarters at McKees Rocks, Pa., and were members of the Carrier's only gang used for construction or heavy repair work on the entire railroad. Electrical workers' seniority is system-wide.

When the new electric control system was planned for East Youngstown, about sixty miles from McKees Rocks, the Carrier discussed the project with Organization representatives and proposed the establishment of new positions for electrical workers with headquarters at Youngstown. But the Organization contended that since this road construction gang with headquarters at McKees Rocks had always been assigned to work at other points they should be given this new work at Youngstown. Consequently the Carrier issued instructions to eleven men, later reduced to the eight claimants, to report at Youngstown at a definite date

“prepared to stay at Y.M.C.A. for duration of construction work at Youngstown. Men to be on job starting at 7:40 A. M. until 4:10 P. M. or until too dark to work. The alternative if you do not room and board at Y.M.C.A. is for management to give you the actual cost of staying at Y.M.C.A. in cash so that you may stay any place of your own choosing.”

The claimants were taken to and from Youngstown at the beginning and end of each work week by motor vehicle or passenger train on Carrier's time at pro rata or overtime rate, whichever was applicable, work normal hours, with some overtime, and at their request received board and room at a motel at Carrier's expense, rather than at the Y.M.C.A., all in accordance with its order and with Rule 14, which provides as follows:

“(a) Employees regularly assigned to road work whose tour of duty is regular, and who leave and return to home station daily (a boarding car to be considered a home station), 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, at straight time for the regular hours, and overtime rates for all overtime hours, except if relieved from duty and permitted to go to bed for 5 hours or more they will not be allowed pay for such hours. Where meals and lodging are not provided by the company when away from home station, actual expenses will be allowed.

The starting time to be not earlier than 6 A. M. nor later than 8 A. M.

Where 2 or more shifts are worked the starting time will be regulated accordingly.

(b) Where employees are required to use boarding cars, the railroad will furnish sanitary cars and equip them for cooking, heating and lodging; the present practice of furnishing cooks, equipment and maintaining and operating the cars shall be continued.”

The Employees' position is that neither Rule 14 nor any other road work rule is applicable; that the Carrier's action in requiring the claimants to remain in Youngstown during the construction of the new facility in effect required them to perform continuous service during the entire periods away from home; that Rule 7 covers “payment for overtime not otherwise specified and provides a convenient method of determining the value of the service rendered by the employees here involved”. Rule 7 is as follows:

“(a) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis with a minimum of one hour for any such service performed.

“Employees shall not be required to work more than 2 hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to 30 minutes.

“(b) Employees called or required to report for work and reporting but not used will be paid a minimum of 4 hours at straight time rates.

“(c) Employees called or required to report for work and reporting will be allowed a minimum of 4 hours for 2 hours and 40 minutes or less, and will be required to do only such work as called for or other emergency work which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movement.

“(d) Employees will be allowed time and one-half on minute basis for services performed continuously in advance of the regular working period with a minimum of one hour—the advance period to be not more than one hour.

“(e) Except as otherwise provided for in this rule, all overtime beyond 16 hours’ service in any 24-hour period, computed from starting time of employes’ regular shift, shall be paid for at the rate of double time.

“NOTE: When an employe is required to work overtime for more than 2 hours, the lunch period provided under the second paragraph of Section (a) shall be paid for at the rate of time and one-half.

“When an employe is required to work overtime and an emergency prevents him from taking the lunch period provided under the second paragraph of Section (a), he shall be paid time and one-half for the time actually worked, plus 30 minutes at time and one-half.”

The Employes’ contention is that Rule 14 is not applicable because it expressly relates only to “employes regularly assigned to road work whose tour of duty is regular,” because claimants’ electrical construction gang is assigned only occasionally as needed to perform electrical work on line of road, and such assignment cannot be construed as a regular tour of duty, since when not so assigned they regularly work as McKees Rocks; and that if Rule 14 were applicable, the Y.M.C.A. or a motel would not constitute a boarding car. However, they state, not only (1) that the Carrier should have transported the claimants back and forth each day if it wanted Rule 14 to apply, but also (2) that if a boarding car had been supplied the claim would not have arisen.

The carrier contends that Rule 7 was not applicable because claimants were relieved from duty each day on completion of their tour of duty and performed no service until their next tour of duty on another day; that Rule 14 has always been considered applicable to this situation; that such an instance was a turntable job so handled; that board and room at a Y.M.C.A., motel, or other facility at carrier’s expense has always been considered a substitute for, and in fact preferable to, a boarding car; that it was impracticable to take claimants back and forth daily because the trip involved a minimum of two hours each way; and that if carrier had understood that Rule 14 were not considered applicable it would have established new positions at Youngstown for the work.

The final sentence of the first paragraph of Rule 14 expressly provides for payment of board and room by the carrier in lieu of a boarding car. For it provides for the payment of actual expenses “where meals and lodging are not provided by the company when away from home station,” “a boarding car to be considered a home station.” Thus, since claimants’ actual home station was McKees Rocks, and no boarding car was made available to them

at East Youngstown, they were certainly "away from home station," and their actual expenses for meals and lodging were accordingly allowed. While, as the Employees contend, Rule 14 does not by its terms strictly apply to employes other than those "regularly assigned to road work whose tour of duty is regular," it is logically applicable to this situation and seems therefore to have been followed in this instance and at least some others.

However, it is not necessary to hold expressly that it was applicable to this claim; for in any event the claimants were relieved from duty on completion of each daily tour of duty, performed no service until their next daily tour of duty, and were fully paid in compliance with Rule 7 for all service performed. Thus since admittedly no other road work rule is applicable if Rule 14 is not, no violation of the agreement has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1961.