

Award No. 3881

Docket No. 3444

2-UP-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Electrical Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the Agreement Equipmentman E. R. Huebner was unjustly dealt with when the Carrier declined to compensate him at the overtime rate for service required of him on his rest day.
2. That accordingly the Carrier be ordered to compensate Equipmentman Huebner the additional halftime rate for the five hours of service rendered the Carrier on his rest day.

EMPLOYEES' STATEMENT OF FACTS: E. R. Huebner, herein-after referred to as the claimant is employed as equipmentman with headquarters at Kansas City, Missouri. His duties are to install, repair, and maintain communication equipment on the First District of Union Pacific System. His tour of duty is monthly.

On December 28, 1957, claimant was ordered by his supervisor, R. H. Brennehan, to arrange to be at Salina, Kansas, for duty at 8:00 A. M. Monday December 30, 1957. Claimant on Sunday December 29, 1957, his rest day, in order to comply with the order given him, gathered his tools and material needed from the shop at Kansas City, Kansas. He called a taxi and rode it to the Union Station. He then boarded U. P. Train No. 9, for Salina, Kansas. He arrived at Salina and was in bed at a hotel at 2:15 A. M.

Claimant reported for work as ordered at 8:00 A. M. Monday, December 30, 1957. In his monthly time sheet he charged eight (8) hours at the overtime rate for the service he had rendered on his rest day.

Claimant was paid on the first half of his January, 1958, pay voucher thirty dollars and thirteen cents, \$30.13. This for his overtime on Sun-

“ * * * **The Agreement contains no provision for travel or deadhead time.** The Employees suggest that a hardship was imposed on the claimant * * * his plans for his rest period were upset. These are strong equitable considerations, but regardless of how the individual members of this Board may react to them, **this Board has no choice but to exclude them from its considerations.** It is an old saying that hard cases make bad law. We do not have the power, nor are we inclined to make bad law. We could not rectify the situation complained of without writing into the Agreement a provision which has not been obtained by collective bargaining. This we will not do.” (Emphasis ours.)

CONCLUSION

The authority of the Board is limited to the claim as presented. The claim in this case demands compensation at the time and one-half rate for travel time on the rest day of a monthly compensated employee. An indisputable fact of this docket is that no rule exists to support the compensation demanded by this claimant.

Authority is legion to establish that under such circumstances the Board cannot write such a rule into the agreement. Its authority under the Railway Labor Act is limited to the interpretation and application of agreements. In the absence of a supporting agreement provision it must dismiss the claim, or deny it for failure of the organization to sustain its burden of proof and to adequately support its demand.

For the reasons assigned, the claim herein should either be dismissed or 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.

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

The principal question presented is whether the Claimant, a monthly rated equipmentman, was entitled to overtime pay at time and one-half rate for time spent in travel from his headquarters in Kansas City, Mo. on his rest day in order to commence an assigned task at Salina, Kansas at 8:00 A. M. the following day. The governing agreement provisions are Rule 7(e) of the basic contract effective April 1, 1957 and Paragraph (4) of the special agreement dated February 9, 1951.

Rule 7(e) provides, in effect, that rest day service of monthly compensated employees such as the Claimant is governed by the above-cited Paragraph (4). The latter provision declares in pertinent part: “Straight time for all hours traveling, and waiting, and for work performed during regular hours, and overtime rates for work performed during overtime hours.”

The foregoing language distinguishes between travel, waiting and work, and provides that straight time is applicable to "all hours traveling." Confronted with language as clear and unambiguous as this, it is not possible to concur with the Organization's contention that for monthly rated employees travel is synonymous with work under this provision, and that the reference to straight time pay for travel was intended only for hourly rated employees. The entire special agreement was designed for hourly employees as defined in the preamble thereof but the parties have reached accord that Paragraph (4) applies to rest day service of monthly employees covered by Rule 7. If it were intended that Paragraph (4) is to be applied differently to monthly rated employees, it is to be presumed that the parties would have incorporated a qualification in Rule 7(e) or elsewhere to this effect. They have not done so and we are not authorized to add such a qualification to the contract language.

Awards No. 973 and No. 2120, which are among the decisions cited in support of this claim, are not in point since neither of those cases was governed by language which distinguished between travel and work.

We are of the opinion that the time spent by the Claimant in gathering his tools and material in preparation for his trip to Salina does not warrant additional compensation beyond the five hours' pro-rata pay which he received for the date in question.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1961.