Award No. 3913
Docket No. 3559
2-WAB-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 13, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. - C. I. O. (Electrical Workers)

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That System Installer Demont Arnold was unjustly treated and the provisions of the current agreement were violated when the Carrier refused to properly compensate him for service performed on Saturday July 19, Saturday August 9 and Saturday August 16, 1958.

2. That accordingly the Carrier be ordered to additionally compensate System Installer Demont Arnold in the amount of four (4) hours at the straight time rate for each of the above mentioned dates.

EMPLOYES' STATEMENT OF FACTS: Demont Arnold, assigned system installer, hereinafter referred to as the claimant, is a monthly rated employe regularly employed by the Wabash Railroad Company, hereinafter referred to as the carrier, in the Communication Department at Decatur, Illinois.

The claimant has an assigned work week Monday through Friday, Saturday as a stand-by or subject to call day, Sunday assigned rest day. On Saturday July 19, Saturday August 9 and Saturday August 16, 1958, the claimant was required to perform services for the carrier, and the carrier has refused to additionally compensate the claimant for the performance of work on the sixth day of his assigned work week.

The dispute was handled with the 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 EMPLOYES: It is submitted that the carrier has violated the forty hour week agreement, effective September 1, 1949, reading in part as follows:

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 on this property did not have an assigned rest day on March 19, 1949.

The decision of the 40-hour week committee in its supplement to Decision No. 33 was to the effect that system installers employed on this property had no assigned rest day prior to March 19, 1949, the date of consummation of the 40-hour week agreement and was a dismissal of the employes' contention that four (4) hours' pay at the pro rata hourly rate for Sundays and holidays as provided in the memorandum of agreement effective April 26, 1948, is applicable to the sixth day of a system installer's work week.

The committee failing to gain the inclusion of a rule providing **an additional four (4) hours at the pro rata hourly rate of pay for system installers if required to work on the sixth day of their 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 four (4) hours on three Saturday claim dates, 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:

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

Second, a system installer's rate comprehends 211 hours per month, i.e., Saturdays are included within the basis of a system installer's compensation.

Third, neither the linemen's agreement nor the 40-hour week agreement signed at Chicago on March 19, 1949, provides for such allowance.

Fourth, the work performed on the Saturday claim dates was emergency work or service incidental thereto and was not "ordinary maintenance or construction work" not required on Sundays on March 19, 1949, which the 40-hour week committee in its supplement to Decision No. 33 held would not be required on the sixth day of the work week after August 31, 1949.

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.

Claimant was assigned as System Installer with Sunday as his assigned rest day. An additional four hours pay is claimed for each day work was required on Saturday, the sixth day of his work week.

The position of System Installer was established by agreement of April 26, 1948 as a Lineman position with monthly rate tied to that of District Lineman, which covered payment for seven days per week, with provision for payment of an additional four hours if required to work on Sunday or any designated holiday, as had been provided for District Linemen.

Pursuant to the Chicago Agreement of March 19, 1949, effective September 1, 1949 claimant's work week was reduced by one day per week with Sunday as his assigned rest day; the provision for additional pay to System Installers and District Linemen for Sunday and holiday work was modified to eliminate reference to Sunday and provide additional pay for holiday work only, and the following paragraph was added to the agreement:

> "Where employes now have a bulletined or assigned rest day, conditions now applicable to such bulletined or assigned rest day shall hereafter apply to the sixth day of the work week. Where employes do not now have a bulletined or assigned rest day, ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week."

As we construe these agreement provisions, System Installers did not have a bulletined or assigned rest day prior to September 1, 1949, when the last quoted provision became effective, and the second sentence thereof applies. It appears that the work required of claimant on Saturday, the sixth day of his work week, in each case, was not ordinary maintenance or construction work but urgent and unusual work which theretofore would have been required of him on Sunday, hence was properly required of him thereafter on Saturday. This issue was determined between the same parties in Award 3445 and like award should follow here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of January 1962.

DISSENT OF LABOR MEMBERS TO AWARDS 3913 AND 3915

The record in these dockets show and the majority so state that the claimants (who are system installers) in accordance with the agreement dated April 26, 1948 had a relief day of Sunday, and that if they were required to work on Sunday they would be paid an additional four hours pay, "the position of system installer was established by agreement of April 26, 1948 * * * with provision for payment of an additional four hours if required to work on Sunday * * *"

We agree with this finding as the agreement dated April 26, 1948 reads in part as follows:

"If a system installer is required to work on Sunday or any of the holidays designated in Rule 3 of the Agreement effective October 1, 1940, he will be paid an additional four (4) hours at the pro rata hourly rate for such day or days."

This means that by written agreement the system installers prior to September 1, 1949 had Sunday as their rest day and if they were required to work on Sunday they were paid an additional four hours pay. Ignoring the record and their own findings the majority concluded that "system installers did not have a bulletined or assigned rest day prior to September 1, 1949." The majority erred in this finding as the above quoted part of the agreement dated April 26, 1948 which was in effect until September 1, 1949 provided that "if a system installer is required to work on Sunday * * * he will be paid an additional four (4) hours at the pro rata hourly rate for such day."

As a result of the above error the majority again erred when they concluded that the end sentence of the pertinent pargraph of the March 19, 1949 agreement was the controlling part of the agreement in this case. As this sentence is for employes who did not have a bulletined or assigned rest day prior to September 1, 1949. It has been thoroughly established in the record that prior to September 1, 1949 the system installers in accords with the agreement dated April 26, 1948 had Sunday as their rest day and if they were required to work on Sunday they would be paid an additional four hours at the pro rata hourly rate for such day. This means that the first sentence of the pertinent paragraph of the March 19, 1949 agreement should be controlling in these dockets as it provides where employes now have a bulletined assigned rest day, conditions now applicable to such bulletined or assigned rest day shall hereafter apply to the sixth day of the work week.

The record also shows that the committee referred to as the Forty-Hour Work Week Committee which was established in accord with the March 19, 1949 agreement ruled on this same issue. This committee ruled that employes who had conditions such as the claimants in these cases, that is where they received additional compensation on Sundays as of March 19, 1949 if they worked, these same conditions would apply to the sixth day of the work week of these employes effective September 1, 1949. Decision Number 33 of the forty hour work 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."

For these reasons this award is erroneous.

LABOR MEMBERS

E. J. McDermott

C. E. Bagwell

T. E. Losey

Edward W. Wiesner

James B. Zink