

Award No. 3914
Docket No. 3585
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 EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O.
(Electrical Workers)

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That District Lineman E. D. Casper 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 5, Saturday July 12, Saturday August 9, Saturday August 16, 1958.

2. That accordingly the Carrier be ordered to additionally compensate District Lineman E. D. Casper in the amount of four (4) hours at the straight time rate of pay for each of the above mentioned dates.

EMPLOYEES' STATEMENT OF FACTS: E. D. Casper, assigned district lineman, 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 Communications Department at Montpelier, Ohio.

The claimant has an assigned work week Monday through Friday, Saturday as a standby or subject to call day, Sunday assigned rest day. On Saturday July 5, Saturday July 12, 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 EMPLOYEES: It is submitted that the carrier has violated the forty hour week agreement, effective September 1, 1949, reading in part as follows:

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 and was not "ordinary maintenance or construction work" such as was not required on Sundays on and prior to 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 District Lineman with Sunday as his assigned rest day. An additional four hours pay is claimed for work required on Saturday.

Prior to September 1, 1949, District Linemen's monthly rate embraced a work week of seven days, but the 1940 Agreement provided:

"Under this rule it is not contemplated that Linemen will be required to perform ordinary maintenance or construction work on Sundays and (named) holidays. However, in cases of emergency in connection with the maintenance of a district by District Linemen when necessary to perform work on Sundays and the holidays herein designated, no additional compensation will be allowed."

By subsequent agreement it was further provided that if required to work on Sundays or the named holidays linemen would be paid an additional four hours at pro rata hourly basic rate.

Pursuant to the Chicago Agreement of March 19, 1949, effective September 1, 1949, claimant's work week was reduced by one day per week and Sunday was made his assigned rest day. At the same time the provision for additional pay to System Installers and District Linemen for Sunday and holiday work was modified to eliminate its application to Sunday work and provide additional compensation only for holiday work. Effective the same date the agreement further provided:

"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 their prior agreements District Linemen did not have a bulletined or assigned rest day prior to September 1, 1949, when this last provision became effective. The work required of claimant on Saturday, the sixth day of his work week, 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 on Saturday. The same issue was determined between the same parties in Award No. 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 AWARD 3914

The record in this docket shows and the majority so state that the claimant (who is a district lineman) in accordance with the agreement dated August 16, 1944 had a relief day of Sunday, and that if he was required to work on Sunday he would be paid an additional four hours pay, "By subsequent agreement it was further provided if required to work on Sundays or the named holidays linemen would be paid an additional four hours at pro rata hourly basic rate".

We agree with this finding as the agreement dated August 16, 1944 reads in part as follows:

"The linemen designated in Rule 2, Paragraphs (a) and (b), of the Agreement effective October 1, 1940 will continue to be paid on the basis provided by Rule 3 of the Agreement, but if required to work on Sundays or any of the holidays designated in Rule 3, linemen will be paid an additional four (4) hours at pro rata hourly basic rate for such day or days."

This means that by written agreement the district linemen 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 "district linemen 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 August 16, 1944 which was in effect until September 1, 1949 provided that "if required to work on Sundays * * * linemen 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 paragraph 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 linemen in accords with the agreement dated August 16, 1944 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 this docket 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 9, 1949 agreement ruled on this same issue. This committee ruled that employes who had conditions such as the claimant in this case, 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