Award No. 3915
Docket No. 3586
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 under the current agreement System Installer A. L. Enochs was improperly compensated for work performed on the following Saturdays: July 12, 19, 26, August 2, 9, 16, 23, 30, 1958.

2. That accordingly the Carrier be ordered to additionally compensate System Installer A. L. Enochs in the amount of four (4) hours at the straight time rate of pay for each of the folowing Saturdays, July 12, 19, 26, August 2, 9, 16, 23, 30, 1958.

EMPLOYES' STATEMENT OF FACTS: A. L. Enochs, hereinafter referred to as claimant, is employed as a system installer in the Communications Department of the Wabash Railroad Company, hereinafter referred to as the carrier. The claimant has an assigned headquarters at St. Louis, Mo., and is compensated on a monthly basis. He is assigned to work Monday through Friday, with Saturday standby or sixth day of work week, and Sunday as an assigned rest day.

On the following Saturdays July 12, 19, 26, August 2, 9, 16, 23, 30, 1958, the claimant was called and required to work on the sixth day of his work week. The Carrier has refused to additionally compensate the claimant for this work.

The dispute was handled with the carrier officials disigned 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:

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.

This case involves the same parties and agreements and presents the same issues as considered and decided in Award 3445 of this Division and in our Award No. 3914. Like award should follow.

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, 1958 * * * 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 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 system installers in accord 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.

E. J. McDermott

C. E. Bagwell

T. E. Losey

E. W. Wiesner

James B. Zink