Award No. 3955
Docket No. 3907
2-AT&SF-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM - Western Lines -

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Lighting and Air Conditioning Inspector, A. D. Rice, who is an Electrician was unjustly dealt with and the provisions of the Current Agreement were violated when the Carrier assigned Car Lighting and Air Conditioning Inspector (CL&AC) Electrician Rice to be available for duty twenty-four (24) hours each Saturday without proper compensation.

2. That under the Current Agreement Electrician, A. D. Rice, who is now assigned as Car Lighting and Air Conditioning Inspector (CL&AC) was unjustly dealt with and the provisions of the Current Agreement were violated when the Carrier refused to compensate him for this time held on duty in excess of that time required by the Working Agreement.

3. That accordingly, the Carrier be ordered to compensate Mr. A. D. Rice as follows:

(a) One and one-half (1½) times his regular rate of pay for sixteen (16) hours each Saturday, beginning June 13, 1959 and each Saturday thereafter.

(b) Claim is also made for time and one-half above Mr. Rice's regular rate of pay for each Saturday for all time actually worked, during his regular assigned hours of availability 7:00 A.M. to 11:00 A.M. and 12:00 noon to 4:00 P.M.

EMPLOYES' STATEMENT OF FACTS: Electrician A. D. Rice, assigned car lighting and air conditioning (CL&AC) inspector, hereinafter referred to as the claimant, is a monthly rated employe regularly employed by the Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as

Further, this and other Divisions of the National Railroad Adjustment Board have ruled in numerous awards that compensation at time and one-half rates is not an appropriate penalty unless service is actually performed. See Second Division Awards 1269, 1771, 1772, 1799, Third Division Awards 4244, 4645, 5929, 5967, 8766, 8771 and Fourth Division Awards 802 and 1099, among many others which support this same principle.

The employes rely on Rule 1, Rule 14 and Memorandum of Agreement No. 5 to support their claim. Rule 1 merely states that eight hours shall constitute a day's work, which is not in dispute in the instant claim. Claimant Rice receives a monthly rate of pay which comprehends eight hours pay for each Monday through Friday work day and, in addition, eight hours pay for each Saturday standby day, as hereinbefore discussed, and there has been no violation of this rule.

Rule 14 is a special rule which sets forth the compensation and working conditions of employes regularly assigned to road work and paid on a monthly basis. The pertinent parts of this rule have been quoted and discussed above and the carrier asserts that claimant's assignment is strictly in accordance with the provisions of that rule.

The carrier has shown that it was within its rights, under the Agreement rules and in accordance with the principles of the Second and other Divisions of the National Railroad Adjustment Board, in its requirement that Claimant Rice protect the service needs of his position on his Saturday standby day, and he is not entitled to the payment of additional compensation claimed in his behalf by reason hereof. The instant claim is therefore without merit under the rules of the governing agreement and should be declined in its entirety.

Carrier reserves the right to submit such additional facts and evidence as it may conclude are required in reply to the ex parte submission of the employes or any subsequent oral argument or briefs of the employes in this dispute.

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.

The Claimant is employed by the Carrier as a Car Lighting and Air Conditioning Inspector at La Junta, Colorado, and is paid on a monthly basis in accordance with Rule 14 of the applicable labor agreement. He is regularly assigned to work from 7:00 A. M. to 11:00 A. M and from 12:00 Noon to 4:00 P. M., Monday through Friday, with Saturday as standby day and Sunday as rest day. His monthly rate includes eight hours' pay for Saturday but the scheduled standby period starts at 7:00 A. M. on Saturday and ends at 7:00 A. M. on Sunday.

The Claimant contends that the entire standby period must be regarded as time worked or held on duty and, therefore, requests sixteen hours' pay at the rate of time and one-half for each Saturday, beginning June 13, 1959.

In addition, he asks for compensation at time and one-half for all time actually worked during his regular assigned hours (7:00 A. M. to 11:00 A. M. and 12:00 Noon to 4:00 P. M.) on each Saturday.

For the reasons hereinafter stated, we are of the opinion that the instant claims are without merit.

1. Memorandum of Agreement No. 5, which has been in effect at all times here relevant, contains special provisions regarding overtime payments to Air Conditioning Inspectors who are paid a monthly salary under Rule 14 of hte labor agreement. It supersedes, therefore, general rules as to overtime payments which otherwise might be applicable to the dispute under consideration. See: Awards 2251 of this Division and 6651 of the Third Division.

The Memorandum provides, among other things, overtime payments for "time worked or held on duty" under specified conditions. Thus, the basic question which presents itself for adjudication is whether the standby time during which the Claimant performed no work is "time worked or held on duty" within the purview of the Memorandum as claimed by him.

In answering this question, we are not guided by any precise contractual definition of those words nor does the record reveal any past practice or custom which would be determinative of their meaning. Hence, we must interpret them in the light of the meaning in which they are commonly used and understood in labor relations.

As a general rule, the term "time worked" refers to time spent by an employe in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business. See: Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123, 321 U.S. 590, 698; 64 S. Ct. 698, 703 (1944); Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 691-2; 66 S. Ct. 1187, 1194 (1946).

On the other hand, the term "time held on duty" ordinarily refers to time spent by an employe in the interest of the employer and his business, even though part of the time may be spent in idleness, provided the employe is appreciably restricted in his movements or otherwise subject to the employer's control during such time. See: Missouri, Kansas & Texas Railway Company of Texas v. United tSates, 231 U.S. 112, 119; 34 S. Ct. 26, 27 (1913). However, if an employe who is on call or standby is not confined to his home or to any particular place but may come and go as he pleases, provided he leaves a message or telephone number where he can be reached, the time so spent is not usually regarded as "time held on duty."

In applying the above principles to the facts underlying this case, we have reached the following conclusions:

It is self-evident that the Claimant's standby time during which he performed no work does not constitute "time worked" as this term is defined hereinabove.

Moreover, the record shows that he is not restricted to his home during the 24-hour standby period but may freely move around in any reasonable way he desires, subject only to the requirement that he keep the Carrier informed as to where he can be reached in case he is needed for emergency work as contemplated in Rule 14 (i) of the labor agreement. In other words, his only

obligation is to keep himself reasonably available for duty during the standby period. In the absence of any contractual provision to the contrary, the time so spent cannot be regarded as "time held on duty". Furthermore, no objection can be raised to the assignment of his standby day on a 24-hour basis. See: Award 1485 of this Division. Consequently, the Claimant is not entitled to receive, in addition to the pay for eight hours included in his monthly salary, any remuneration for the standby time as such where no actual work is required or performed.

2. The Claimant also requests payment at the rate of time and one-half for all time actually worked during his regularly scheduled hours (7:00 A. M. to 11:00 A. M. and 12:00 Noon to 4:00 P. M.) on each Saturday in question.

At the outset, it should again be noted that eight hours' pay for the Claimant's sixth or standby day is included in his monthly salary. Furthermore, Paragraph (e) of Memorandum No. 5 expressly provides that "no overtime payments are to be made for time worked on any day Monday through Saturday on which the employe does not actually render compensated service in excess of eight hours." Thus in order to receive overtime pay the Calimant must prove that he was required to work more than eight hours on the Saturdays under consideration. The record is devoid of any facts which would indicate that he actually worked more than eight hours on any Saturday.

The Claimant also relies on Rule 14 (i) of the labor agreement which provides, in essence, that no ordinary maintenance or construction work not required of an employe in his position on Sunday prior to September 1, 1949, will be assigned to him on his sixth or standby day in any work week. The burden of proof that the Carrier violated this provision rests upon the Claimant. The evidence on the record considered as a whole is, however, insufficient to permit a finding to the effect that the Carrier violated Rule 14(i) as contended by the Claimant.

In summary, we hold that the above discussed claim is unjustified.

3. Since we have denied said claim on its merits, it becomes unnecessary to rule on the Carrier's procedural objection and we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1962.