

Award No. 4483
Docket No. 4439
2-CMSI&P-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Carrier, unjustly deducted and denied full payment for extra services performed on September 16, 1961, standby day of Trolley Lineman Fred Witt, hereinafter referred to as the Claimant, such deduction amounting to eight and one-half (8½) hrs. at \$4.1325 per hour.
2. The Claimant was required to perform additional service on his standby day, not comprehended or compensated for within the rate structure of his monthly rate of pay.
3. The Claimant contends the only service required on his standby days is to respond to emergency calls to repair trolley and highlines in cases when the trolley or highlines are disrupted by storms, slides, fire and train wrecks.
4. The employes further contend that the services performed on September 16, 1961 was ordinary maintenance or construction work and in accordance with the provisions of the current schedule Rule No. 29 of the Electrical Workers' Agreement, effective September 1, 1949, such services would not be required of them on their standby days.
5. The employes further contend that when such ordinary maintenance or construction work is required of them on their standby days, the Carrier is then subject to pay them additional compensation to their monthly rate of pay at the overtime rate for each hour that the Claimants are required to perform service, and, accordingly, the Carrier be ordered to compensate the Claimants the amounts deducted.

6. The employes further contend that the payment for the sixth day of the work week recognized as their standby day, is to compensate them for any and all emergency service performed after their normal working hours during the work week, Saturdays included, for which no additional compensation is paid to their monthly rate of pay. They must also stand by after each work day period or inform their supervisor as to where they may be reached in order to respond for emergency calls.

EMPLOYES' STATEMENT OF FACTS: Trolley Lineman Fred Witt, hereinafter referred to as the claimant, is employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the carrier, as monthly rated trolley lineman five days per week with Saturday as a standby day.

During a period both before and after September 16, 1961 the carrier was engaged in a construction project of lowering the tracks through tunnels located on lines west in its electrified main line territory. The track forces (maintenance of way) were engaged in the performance of that work and in connection therewith and during this period of construction the claimant was also engaged in performing the work on the trolley line constructing it so that it was properly located in relation to the road bed and rails.

On Saturday, September 16, 1961, which is the claimant's standby day, he, the claimant, was instructed to continue his work on this construction project, and he worked eight and one-half hours on that day.

The carrier, in accordance with the agreement and understanding, paid the claimant for eight and one-half hours at time and one-half for working on construction work on that day, but subsequently deducted wages from his salary amounting to that claimed in the employes' statement of claim.

Prior to the occurrence of this dispute, such monthly rated employes received time and one-half, in addition to their monthly rate, for performing such work as is here involved when such work was performed on their standby days and was the subject of discussion and an understanding was had with Mr. A. G. Britzius, assistant to general manager, who was the highest officer of the carrier authorized to handle disputes concerning trolley linemen. (lines west.)

The claim was filed and handled in accordance with the agreement for the amount deducted and was appealed up to and including Mr. S. W. Amour, Assistant to Vice President, as shown by a copy of the general chairman's letter. Mr. Amour also declined to settle the case, as shown by a copy of his letter.

The agreement, effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that based upon the foregoing statement of facts and of the aforementioned agreement, particularly Rule 29, reading:

"Employes regularly assigned to perform road work and paid on a monthly basis shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to other employes covered by this agreement shall apply to service on such assigned rest day.

to progress only one of the five cases to your board with the understanding that the remaining four would be held in abeyance, to be disposed of on the basis of the award rendered in the one case progressed to your board; however, for some unexplained reason the employes would not enter into such an agreement with the carrier. The carrier mentions this so that your board will understand that it is through no fault of the carrier that your board is now burdened with five identical cases, instead of only one.

It is the carrier's position that there is absolutely no basis for the instant claim and we respectfully request that it be 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 waived right of appearance at hearing thereon.

The parties to this dispute are the same as in Award No. 4481.

The facts are essentially the same as in that Award, and the submissions contain the same type of evidence and arguments.

Our Award No. 4481 governs here and the claim must be sustained in accordance therewith.

AWARD

Claim sustained in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.