



Award No. 5728

Docket No. 5588

2-AT&SF-EW '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (ELECTRICAL WORKERS)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
SYSTEM (EASTERN LINES)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the Agreement the Carrier erred when they failed to compensate Division Lineman Mr. R. A. Woods, for four (4) hours at his regular straight time rate, for Saturday, May 7, 1966, rest day for Woods.
2. That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Division Lineman, Mr. R. A. Woods, four (4) hours at his regular straight time rate for this Saturday, May 7, 1966, rest day for Woods.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. A. Woods, hereinafter referred to as the Claimant, is a monthly compensated Electrical Workers, Division Lineman, regularly employed by The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the Carrier, in the Communications Department of their Eastern Lines, and the Claimant is headquartered at Newton, Kansas, and his work week is Monday through Friday, Saturday and Sunday rest days.

This dispute has been handled with the proper Carrier officers designated by the Santa Fe Management to handle such claims and disputes with the net result that all who have reviewed the case have denied same and refused to make any correction or adjustment in the conditions that generated the dispute.

The Agreement effective August 1, 1945, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: Pursuant to the provisions of the current controlling Agreement, most particularly Rule 14, reading in whole or in part as follows:

**REGULAR ASSIGNMENT TO ROAD WORK—
PAID ON MONTHLY BASIS**

same issue was determined between the same parties in Award No. 3445 and like award should follow here.

AWARD

Claim denied."

The respondent Carrier emphatically reasserts that the service performed by the claimant on May 7, 1966 was necessitated by an emergency condition, requiring immediate attention to facilitate operations and safeguard human life and property. The record shows beyond all doubt that the governing rules of the current Shop Crafts' Agreement do not provide for any additional compensation for emergency service performed on Saturday and there can be no basis for a sustaining Award in this case.

In conclusion, the respondent Carrier respectfully reasserts that the Petitioner's claim in the instant dispute is wholly without merit or support under the governing agreement rules and should, for the reasons that have been advanced herein, be either dismissed or denied.

The Carrier is uninformed as to the arguments the Petitioner will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the Petitioner's ex parte submission.

(Exhibits not reproduced)

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 is employed as Division Lineman with headquarters at Newton, Kansas. He is paid on a monthly basis under the provisions of Shop Crafts' Rule No. 14 captioned "REGULAR ASSIGNMENT TO ROAD WORK—PAID ON MONTHLY BASIS." His assigned hours are 8:00 A.M. to 5:00 P.M. with one hour lunch period 12:00 noon to 1:00 P.M., Monday through Friday, with Saturday as a stand-by day and Sunday as his regularly assigned rest day. On Saturday, May 7, 1966, the sixth day of his work week, he was called and required to work starting at 2:30 P.M.

The alleged facts, position of each party and the issues as developed on the property are found in the following:

1. Letter of appeal from denial of the Claim by Superintendent of Communications dated August 2, 1966, addressed to General Manager:

"Claim: That Mr. R. A. Woods be allowed four (4) hours at his regular straight time rate for Saturday, May 7, 1966.

"Saturday, May 7, 1966, a rest day for Mr. Woods and also an available day for emergency work, was called out on this Saturday, May 7, to make repairs to telegraph wires, numbers 22 and 23. When Mr. Woods arrived he found wires 22 and 23 patched out, indicating that the local operator and distant operators were having no trouble handling their Saturday business, and whatever was causing the trouble could have waited until, Monday, May 9, 1966 to handle this ordinary maintenance work. This same trouble occurred May 22, 1966, a Sunday, and the Wire Chief patched out wires 22 and 23 the same as was done on May 7th. However, for this latter trouble they did not call Mr. Woods; the proper Carrier officers realized and elected that the trouble was of no consequence and could wait until Monday, May 23, 1966. These were identical circumstances of wire trouble and the one on May 7th could have also been held over until Monday, May 9th."

Rule 14 (i) indicates as follows:

"Rule 14

"(i) 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." (emphasis supplied)

"You will note that this paragraph (1) of Rule 14 forces the same conditions upon the Company that existed prior to September 1, 1949. Those prior conditions were that on Sunday, which is now Saturday, required the Company to apply the same conditions to Saturday that was formerly applied to Sunday. This line interference was corrected at the terminal and therefore there was no emergency and the Company supported that by their actions of May 22nd.

"Mr. Weems denied this claim and these four (4) hours on the position that it was the Carrier's prerogative to determine when a case of trouble should and would be handled. The employes do not quarrel with this position. However, when conditions and positions exist that violates the employees' rights and the provisions of the Agreement, then the employee has the right to be made whole by being compensated four (4) hours for May 7, 1966."

2. Denial of appeal by General Manager—under date of October 11, 1966:

"Our investigation developed that on Saturday, May 7, 1966, wire trouble developed on wires 22-23 on the Fourth District between Mattfield Green and Augusta. A patch on the Dispatcher's phone restore this circuit to operation but left the Carrier short a conversation phone. In this connection, an extra gang consisting of approximately eighty-five men was renewing cross ties and surfacing the main track between Bazar and Cassoday, and, in order to facilitate the progress of the extra gang, as well as providing for the safety of the employes and property, the conversation phone was required. In order to return the conversation phone to service, the Chief Dispatcher called the operator at El Dorado so he could test

and determine the location of the trouble. Through various tests, the trouble was located on Division Lineman Woods' territory between Mattfield Green and El Dorado; therefore, Claimant Woods was called to make the repairs necessary to restore the conversation phone to service.

"In view of the large force of trackmen (approximately eighty-five employes) working on Saturday, May 7, 1966, all of whom were either directly or indirectly dependent upon the conversation phone for their safety, as well as the safety of property and the expediting of the work, we do not consider the repairs made by Claimant Woods as ordinary maintenance or construction work; and, therefore, we can find no violation of Rule 14 of the current Shop Crafts' Agreement cited in support of your claim. In this connection, we refer you to Second Division Award No. 3445 wherein the Board, in denying a similar case, had the following to say:

'The work here involved was not ordinary, but extra ordinary, in that it was very seldom required and of necessity had to be performed on Saturday.'

For the reasons expressed herein, your claim is respectfully declined.

"Without receding from or prejudicing our position stated above, we feel there are certain circumstances surrounding this particular case which you may not be aware of and, therefore, for your information we will recite these circumstances.

"First, in a Letter of Understanding, dated April 8, 1966, the Carrier reached an agreement with General Chairman G. E. Tressler of the BofMofWE to the effect that the assignment of three correlated extra gangs (approximately eighty-five trackmen) engaged in undertrack plowing operations on the Fourth District, Middle Division, between El Dorado and Ellinor, Kansas, you would have an assignment of Tuesday through Saturday in lieu of the usual Monday through Friday work week for the reason the Monday through Friday assignment of these gangs severely interfered with the scheduled arrival of important freight trains, resulting in a threat by shippers and receivers to divert traffic from our line, and that by changing the work week of these gangs we could accomplish a much needed improvement in our railroad and still retain traffic."

"Second, the above letter of Understanding became effective with the work week of April 11, 1966, and was to remain in effect until the operation referred to was completed, or for a period of approximately eight weeks. Accordingly, this would encompass May 7, 1966, the date of the alleged violation.

"In view of the extraordinary work week of the extra gang involved in the much-needed improvement to your railroad, along with the threat by shippers and receivers to divert traffic from our line, perhaps, after further consideration you may want to discuss this case when you have an opportunity to be in this territory and, if so, we are agreeable to suspending the time limit to permit such a discussion."

3. Appeal from denial by the General Manager to Assistant to the Vice President, dated November 15, 1966, which adds the following to what was set forth in the appeal to the General Manager:

"Mr. Olson denied this claim account assigning trackmen to a work week, Tuesday through Saturday, requiring phone service to this track gang that was going Tuesday through Saturday when they should have been working Monday through Friday, except for a Special Agreement with the Maintenance of Way Employees.

"If an agreement was necessary with the Maintenance of Way to work outside the established work week, then it is reasonable to assume and believe that the Electrical Workers should be compensated for work necessary because of this Special Agreement. This claimant was denied his Agreement rights by this Saturday assignment and he should be compensated therefor as spelled out in Rule 14(i) and which has been supported by several Second Division Awards. This phone trouble was routine work and Division Lineman Woods should have and be additionally compensated four (4) hours."

4. Denial of appeal by the Assistant to the Vice-President, dated January 12, 1967:

"My investigation of this case revealed the circumstances to be as outlined to you in General Manager Olson's letter of October 11, 1966. Therefore, the claim on behalf of Division Lineman Woods is respectfully declined for the reasons given you in that letter, in which I concur."

The parties are in agreement that: (1) it is the prerogative of management to determine work to be performed and the time of performance; (2) for performance on a Saturday (the sixth day of the work week) of ordinary maintenance work not required to be performed on a Sunday prior to the adoption, by the parties, of the National 40-Hour Work Agreement of March 19, 1949, of which Rule 14(i) is part, an employee is entitled to additional compensation; and (3) emergency work was required to be performed on a Sunday prior to May 13, 1949.

The parties are in disagreement as to whether the circumstances under which the work here involved was performed supports a finding of "emergency."

Carrier cites Award No. 1944 involving the parties herein and the same Rule for the propositions that: (1) ". . . the requisite for Sunday work before the Forty Hour Week rule was not emergency but urgency; not whether it had been foreseen but whether it could well be prevented;" (2) work seldom required to be performed on Saturday is not ordinary, but extraordinary. These propositions are a play on words not supported by the Rule. The sole test prescribed in Rules 14(i)—which he have no jurisdiction to enlarge upon—is whether the work, regardless of its nature or under the circumstances performed, was required to be performed on a Sunday prior to adoption of the Rule.

The words "ordinary maintenance . . . not . . . required on the sixth

day of the work "week" are, in general usage, not so intelligible as to definitely reveal the intent of the parties as to their application. They have no common meaning established by usage and custom in the industry. Consequently, indispensable to interpretation and application is evidence of intent drawn from the collective bargaining history; or, practice of *de facto* application on the particular property; or, other evidence of probative value to prove intent.

The burden of proof that the work here involved was "ordinary maintenance" not required to be performed on a Sunday prior to the adoption of Rule 14(i) is vested in Organization. It adduced no evidence to satisfy the burden. We, therefore, are compelled to dismiss the Claim for failure of proof. See Award No. 3955.

Organization having failed to make a *prima facie* case of violation of Rule 14(i) we do not reach consideration of the defenses proffered by Carrier.

A W A R D

Claim dismissed for lack of proof.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 27th day of June, 1969.