

 Award No. 6283

Docket No. 6126

2-L&N-MA-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

LOUISVILLE AND NASHVILLE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

(a) That under the current Agreement, Machinist W. E. Hammon (hereinafter called the Claimant) was improperly compensated for work performed on October 11, 1970.

(b) That the Louisville & Nashville Railroad (hereinafter called the Carrier) be ordered to pay the Claimant the difference between the time and one half rate and the double time rate for the fourteen (14) hours of service performed on October 11, 1970, as provided by Public Law 91-226, Memorandum of Agreement Attachment No. 3.

EMPLOYEES' STATEMENT OF FACTS: The Claimant is regularly employed as a machinist at the Carrier's main shops in Louisville, Kentucky. He is shown on the January 1, 1970 machinist seniority roster in position No. 179, with seniority dating of June 21, 1952. There are 272 machinists on that roster. His regular assignment is Monday thru Friday, first shift, with Saturday and Sunday as his rest days. His regular duties are setting up and operating a radial drill press in the general machine gang, supervised by Foreman James Mason. The building in which the Claimant works is a very large structure in which diesel locomotives are completely overhauled, repaired and made ready for service on the road. It is commonly referred to as the Backshop, or, Shop No. 1.

In this Backshop there are several large overhead, cab operated cranes of various capacities. The smallest being of ten tons and the largest is two hundred tons. One of these cranes, of twenty ton capacity, was removed during the early part of 1970 so that it could be completely rebuilt by an outside contractor. Upon completion of this work the crane was returned to the Carrier and arrangements were made, with another outside contractor, to re-install the crane on a weekend while all normal operations were shut down. The contractor and several of the Carrier's shopcraft employees were scheduled to work Saturday, October 10, 1970 to replace the crane. During the process of replacing the crane, it was found that the cab and some of the other

ARTICLE V—OVERTIME RATE OF PAY. All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regular assigned hourly or daily rated employe on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof. (Emphasis ours.)

Claimant worked his regular assigned five days for the week October 5 through 9. He also worked on the 10th and 11th, and for such service is claiming double time for the service on the 11th under the provisions of the above quoted Article V.

The double time as provided for in Article V was not applicable for claimant was on stand-by while contractors were installing a crane in Shop No. 1, and the work had to be performed on Saturday and Sunday while the Shop was not in operation. The contractors had to finish their job in order that the equipment could be removed and the Shop employes could work their regular Monday morning shifts.

The work performed by Mr. Hammon on October 10 and 11 was emergency work, and he was properly compensated under the call rule, Rule 8 of the current working agreement, which states:

Service rendered by an employe on his assigned rest day or days will be paid for under the call rule when such service is not a part of any assignment.

The work for which Mr. Hammon was called was of a non-recurring nature, vital to the operation of the Shop, and as such did not qualify Mr. Hammon for double time payment.

Article V was not applicable for it states—

* * * except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof.

The applicable portion of the Call Rule, Rule No. 7, in the current working rules agreement, is 7(d), which states:

Employes called or required to report for work and reporting will be allowed a minimum of 4 hours at straight time rates for 2 hours and 40 minutes or less, and will be required to render only such service as called for or other emergency service which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movements.

Carrier submits it has shown there is no basis for the claim and, therefore, asks 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.

An outside contractor was hired by the Carrier to perform work, in furtherance of which several of Carrier's employes were also required to be present aiding and assisting the contractor, claimant being among them. He had worked his full weekly assignment but because of the pressure of finishing the job, he also worked his first rest day, Saturday, and was required to work the second rest day, Sunday. For services rendered on Sunday, claimant was compensated at the time and one-half rate, and is demanding double time in accordance with the provisions of Public Law 91-226, enacted by Congress and signed by the President on April 9, 1970, which in the Memorandum of Agreement provides as follows:

"H. Rules changes effective as of the date of notification of ratification of this Agreement as follows:

4. Pay for service on second consecutive rest day as set for in Attachment No. 3."

Attachment No. 3 states:

"All agreements, rules, interpretations and practices, however established, are emended to provide that service performed by a regularly assigned hourly or daily rated employe on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule nor will it be paid for under the provisions hereof."

The Carrier contends that the work involved was emergency work and hence is within the purview of the exception to Attachment No. 3 quoted above.

From the facts of the case, we are unable to conclude that the work performed constituted emergency work. The burden of proving this clearly rests with the Carrier. We will agree that there might have been great pressure and a substantial need to finish the work at hand, but this falls far short of that which would normally be characterized as emergency work.

Since claimant has satisfied all the conditions precedent of Attachment No. 3, that is, he worked all the hours of his assignment in the work week as well as worked on the second rest day, he is entitled to be paid at double the basic straight time rate.

There was some confusion in the record as to the specific date of the claim. The claim as submitted was for work performed on October 11, 1970, whereas the correspondence between the parties listed the date as October 14, 1970. This apparent contradiction was obviously a typographical error and did not substantially affect the claim itself. Carrier recognized such in

its letter to Mr. B. B. Kidwell under date of December 30, 1970. We will accordingly sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 28th day of March 1972.