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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6354
Docket No. 6135
2-SLSF-EW-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the current agreement when it unjustifiably denied Communications Department Gang Lineman E. M. Trask the right to return to this assigned headquarters at Springfield, Missouri, at the end of his work weeks while relieving the vacation assignment of Division Lineman C. M. Golubski of St. Clair, Missouri.
2. That accordingly, the St. Louis-San Francisco Railway Company be ordered to compensate Gang Lineman E. M. Trask at the rate of time and one-half for eight (8) hours on the date of September 28, 1969, and five (5) hours on the date of October 5, 1969, account of the above violation.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 arguments of the Organization and of the Carrier provide these undisputed facts: The claimant is a Gang Lineman headquartered at Springfield, Missouri. He was properly assigned to relieve a division lineman for a 2 week period. The claimant is paid on a monthly basis for regular work Monday through Friday each week and to stand-by regularly on the 6th of each week at his assigned headquarters for emergency work, and to regularly enjoy his rest day on Sunday of each week. The territory to be protected extended from 53 to 232 miles from the claimant's headquarters. He elected to stand-by on the 6th day approximately 187 miles from his headquarters. This was too far to travel home on the first Sunday and return for work on Monday, therefore, the claim is made for 8 hours at overtime on this day. The second week, the claimant again elected to stand-by the 6th day approximately 187 miles from his headquarters and claims

5 hours pay at overtime for the time spent in traveling home to his headquarters on Sunday at the conclusion of his relief assignment.

The parties differ as to the claimant's status on both Sundays. The Organization argued that the 8 hours and the 5 hours were tantamount to work time because the claimant was not free to be at his headquarters in Springfield. In support of this position, reference is made to Third Division Awards #826, 1070, 1407, 1675, and 2640 which in substance state that when an employee is required to remain available and is not free to use his own time, he should be compensated as though he had worked on the premise that, "they also serve who only stand and wait." Reference is also made to Second Division Awards #973, and #2120 which, in essence, conclude that travel time on Sunday in order to be at work on Monday should be compensated time.

The Carrier argued that the claimant was free to use both Sundays as his rest days; that as a monthly paid employee he was required only to stand-by where assigned on the 6th day; that he could have worked his way toward his headquarters and spent the 6th day only 57 miles from there.

The Carrier's argument is a tenuous one and may be regarded as a, "tongue-in-cheek" answer under the circumstances. Even if the claimant was 57 miles from his headquarters, he would be required to spend time traveling on his rest day. This is not freedom to use the rest day as he sees fit to do so.

Nevertheless, the Board in this case is not free to apply the rationale expressed in Second Division Award 4361. That Award is based on the reasoning that as an instrument of industrial and social peace a labor agreement is flexible. It may be applied broadly and liberally to accomplish its evident aim and purpose. Rather than to limit litigation and to promote industrial harmony, flexibility resulting in different applications of the same Rules and provisions of a labor agreement may create confusion and uncertainty leading to chaos which would negate the result of conditions earned by both sides through negotiations. The dissenting opinion of the Labor Members expresses a more exacting but sounder approach, to wit: "The relations are to be governed not by the arbitrary will or whim of the management or the men, but by written rules and regulations mutually agreed upon and equally binding on both."

Unfortunately for the claimant, this fundamental approach to the problem does not provide the equitable relief which he might otherwise obtain.

Rule 5, provides travel time payment only for, Traveling Rest Day Relief Employees.

Rule 6, does not provide for compensation on a rest day where no services are performed. This Rule covers the employment status of the employee.

Rule 8, provides for expenses when the employee is away from his headquarters, and it is conceded that the employee received his expenses.

Rule 12, referring to compensation for work performed on Sunday is not applicable.

Rule 7 headed, TRAVELING, provides compensation for hourly rated employees traveling or waiting as may be required in the performance of work away from home station, and does not apply.

Rule 25, (c) (d), defines the headquarters location of employees required to fill vacancies of Division Lineman. There is no dispute as to this but it does not affect the facts of this case.

As so often happens, in fairness to the claimant, more lengthy discussion is necessary to explain why relief may not be granted in what appears to be a deserving situation. Equity, however, cannot be substituted for the written agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____

E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July, 1972.