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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6477
Docket No. 6244
2-N&W-EW-'73

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

Parties to Dispute: System Federation No. 16, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)

Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. The Norfolk and Western Railway Company violated the current agreement Rule No. 8 when it refused to compensate Electricians C. O. Graham, A. C. Ludwick, Jr., T. G. Parr, F. C. Price, R. A. Glass, I. D. Childress, eight (8) hours pay at the time and one-half electrician's rate for work performed on Sunday October 11, 1970 at the General Office Building North.

2. That accordingly, the Norfolk and Western Railway Company be ordered to compensate the six above-named employees an additional five (5) hours at time and one-half electricians' rate of pay as a result of this 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 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 Claimants, regularly employed by the Carrier at its Roanoke, Virginia Shops, were, in accordance with their standing on the appropriate overtime list, advised on Friday, October 9, 1970, that their services were required on Sunday, October 11, 1970 to "make changes in the wiring on the sixth floor of the General Office Building North", a location some distance from their regular work stations in the Shops. Claimants reported to the Shops at 8:30 A.M. on Sunday, October 11, 1970, as instructed, picked up necessary tools, travelled to the General Office Building, completed the assignment, and returned to the Shops. The entire transaction consumed less than three full hours and they were paid therefor at time and one-half their regular hourly rate of pay.

On October 19, 1970, a time claim was filed in behalf of the Claimants involing Rule 8 of the Controlling Agreement and based thereon alleging that the Claimants should have been afforded eight hours of work by Carrier on Sunday, October 11, 1970, which was one of their assigned rest days.

Carrier rejected the claim on the grounds that Rule 8 is not applicable under the conditions and circumstances of the facts summarized above. It contends that Rule 8 applies to employes "regularly" assigned to work on their rest days and that this is supported by Rule 1½(o) which provides that:

> "Service rendered by employes on their assigned rest days shall be paid for under existing call rules unless relieving an employe assigned to such day in which case they will be paid under existing rest day rules."

The extensive review by the Carrier of the history and evolution of the various rules claimed to be factors in this dispute was most illuminating. However, the claim is based on the application of Rule 8 which reads:

> "RULE No. 8 - OVERTIME
>
> Employees assigned to work on their rest days or on holidays, or those called to take the places of such employees, will be allowed to complete the balance of the day unless released at their own request. ..."

Carrier avers that Claimants were called out to perform the necessary work and that their being compensated pursuant to the call rules was in full compliance with contractual requirements. There are several facets of the related circumstances on the weekend of October 9 through 11, 1970 which seem to negate this position. The Rules cited by the Carrier specifically relate to methods of computing compensation for working on rest days. Rule 8 sets forth an obligation to provide work or pay in lieu thereof under the circumstances to which it refers. It is well established and recognized that the call rules involve the requiring of services by employes to deal with happenings which arose without design, without being expected, coming by change, caused by unforseen events. (See Third Division Award 14640.) No where in its submission does Carrier assert that an unforeseen emergency requiring a call-out of Claimants had arisen. The contrary is the fact. The work was the conclusion of an ongoing project which was to provide standby electrical power for Carrier's Computer Service Center and which when integrated with the then existing computer electrical system would afford an uninterruptable source of power for that facility. The final connecting work was pre-planned and Claimants were "assigned" to perform it, not called out.

Carrier, at length, insists that the word "regularly" is to be implied or added in front of the word "assigned" in Rule 8. It cites Rules from Agreements commencing in 1917 and those negotiated over the years until 1949 in which were found the predecessors to the current Rule 8 at times prior to the establishment of the forty-hour work week in the industry. The cited Rules invariably read, "Employees regularly assigned to work Sunday ...". It recounts the disagreement between the Organizations representing the employes and itself on modifications to be made in certain Rules to bring about conformance

with the 1949 National Agreement. Rule 8 was one of those in dispute. The Committee towhich the controversies were submitted rendered Decision 5, which Carrier claims set up the intent of Rule 8, namely that Rule 1½(o) and Rule 7 applies to all rest day work except that performed by employes "regularly" assigned to such schedule. No explanation with probative factual data is offered for the omission by the drafters of the Rule of this significant word when the Agreement, allegedly in accord with Decision 5, was codified and put in final form. Nor does Carrier present any example of any employes anywhere in its System who are "regularly" employed to work on their assigned rest days. It is interesting to note that the Employe members of the Forty-Hour Week Committee which issued Decision 5 dissented from part of the decision (attachment N-2 to Carrier's submission) and this may have a bearing on the evolution of Rule 8's current language. It should not be necessary to cite the extensive number of Awards in which it was enunciated and restated that this Board is not empowered to amend, modify or add to the Rules of the Agreement.

There is a brief reference in the correspondence, as the claim was being processed to the fact, alleged by the Local Chairman, that the Carrier, in arranging for the work to be done at the General Office Building, could have utilized the Claimants for other work for the remainder of their shift time on October 11, 1970. This was not dealt with by Carrier in its submission, and leaves a void with reference to it.

It must be noted that the facts in the instant dispute are clearly distinguishable from those in the Awards cited by both sides and the Award herein is not premised thereon.

We are giving a strict interpretation of the language of this Rule. It does not provide that in making an assignment to employes to work on their rest day, that they be afforded 8 hours work or pay in lieu thereof. It says, "they will be allowed to complete the balance of the day ...". The Claimant's normal work day ended at 3:30 P.M. and they had a one-half hour unpaid lunch period. They did not protest being told to report at 8:30 A.M. Therefore, Carrier was required to afford them three and one-half hours additional work.

This Board has, in many of its Awards, refused to grant compensation at punitive rates to employes who were held to have been deprived of a contractual right to certain work, but who were not in a position to perform any of the work. This concept is not pertinent to the instant matter. Claimants appeared for work, were ready, willing, and able to continue working to the end of their normal shift quitting time and are entitled to premium pay for the hours they should have been retained at work.

It must be held that Claimants were entitled to the benefits of Rule 8 when they were assigned towork on Octoberll, 1970 and they should have been given an additional three and one-half hours work to do or pay therefore at time and one-half their regular hourly rate of pay.

A W A R D

Claim sustained to the extent set forth in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1973.