

(Advance copy. The usual printed copies will be sent later.)

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6537  
Docket No. 6356  
2-N&W-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute:      { System Federation No. 16, Railway Employees'  
                                 { Department, A. F. of L. - C. I. O.  
                                 { (Carmen)  
                                 {  
                                 { Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company improperly compensated Mr. M. E. Klein for work performed on his second rest days, Sunday, May 9, 1971, and Sunday, May 23, 1971.
2. That accordingly the Norfolk and Western Railway Company be ordered to compensate Mr. M. E. Klein double time account of working on his second rest days which would be three (3) hours for each day at carmen's applicable straight time rate, in addition to compensation already received on May 9 and May 23, 1971.

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.

Claimant, a Car Inspector, works a first shift, Monday through Friday work week, with rest days Saturday and Sunday. After working his regular five day week, Claimant also worked on Saturday May 8, 1971 and Saturday May 22, 1971. Claimant was also required to perform his regular type of work for three hours on Sunday May 9, 1971 and for three hours on Sunday May 23, 1971. Carrier alleges that Claimant was called in to work under the provisions of Rule 2B of the Agreement and was paid time and one half in accordance with that Rule, for the Sunday work. Petitioner urges that Article V of the April 24, 1970 National Agreement is applicable and that therefore Claimant should have been paid double time for the Sunday work. Article V reads:

"ARTICLE V - OVERTIME RATE OF PAY

All agreements, rules, interpretations and practices, however established are amended to provide that service performed by a regularly assigned hourly or day rated employee 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."

Carrier asserts that an emergency existed on both Sundays in question thus constituting an exception to Article V. Having asserted this defense Carrier is obligated to present evidence to support the contention of "emergency"; the record is devoid of such proof, even though the work was obviously important to Carrier. We cannot accept mere assertions of "emergency" as proof (2nd Division Award 5484).

Claimant has satisfied the terms of Article V of the National Agreement (quoted above) by (1) working all of his regular hours in the two work weeks; (2) by working the first rest day of both work weeks which did not constitute an emergency; and (3) by performing services which did not constitute emergency work on both of the second rest days. This issue is well settled: see Awards 6252, 6282, 6283, and 6304. We will sustain the Claim and Claimant should receive the difference between double time and what he did receive for work performed on May 9 and May 23, 1971.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1973.