

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (System Federation No. 156, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Long Island Rail Road Company

Dispute: Claim of Employees:

1. That the following employees, W. T. Kusinsky, Electrician, was deprived of the double time rate of pay worked on Sunday, March 5, 1972 - five (5) hours - when he was called to work on the rectifier at Sub Station A08.
2. That the above mentioned employee be compensated at the double time rate of pay instead of the time and a half rate he received for work performed on that day.

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 were given due notice of hearing thereon.

This is one of a number of claims arising out of a dispute relating to the interpretation and application of Article VII of the Agreement of January 15, 1971, which reads as follows:

"Article VII - Sunday Work

The number of employees to be regularly assigned to Sunday work shall be limited to the minimum number necessary to maintain service. The parties agree that the number of such employees regularly assigned to Sunday work at the present time shall constitute the maximum number of employees who may be so assigned without penalty. In the event the Carrier should assign more than that number to Sunday work those so assigned who exceed such maximum shall be paid at the rate of double time."

The uncontroverted facts in this claim are that the Claimant was employed as a sub-station electrician; that on the claim date he was called in an emergency to inspect and repair a rectifier at sub-station PA08; that no electrician was regularly scheduled to work on that day; that Claimant worked five (5) hours for which he was paid at the time and one-half rate. Employees contend that he should have been paid at the double time rate under Article VII.

Employees rely solely upon the award of Public Law Board No. 790. The same Carrier and the same Organization were parties to that dispute and the issue involved the interpretation of the same Article VII. The facts in that case were that no electrical workers were regularly assigned to work on Sundays at the Dunton Shops. When the claimants were assigned to work on Sunday, January 31, 1971, "they increased the number of employees regularly assigned to work on Sunday by twenty-six."

The award of Public Law Board No. 790 contains the following:

"Carrier avers that double time was never contemplated for casual Sunday work. In this connection Carrier increases the number of employees regularly assigned to Sunday work. Such an interpretation might give rise to the indiscriminate assignment of casual overtime on Sunday an abuse Article VII was designated in part to cure.

* * * * *

...The words in the Article are clear, free from ambiguity and should be given their common and ordinary meaning.

Accordingly, this Board finds that the employees listed on schedule A are due for each hour worked on January 31, 1971 the difference between the time and one-half rate they were paid and double time."

Here the Carrier has raised the same defense that double time pay under Article VII was never intended to apply to casual employees assigned to perform non-programmed work on Sunday. Not only did the award in Public Law Board No. 790 overrule this contention, but a number of awards subsequently rendered by this Division have affirmed the findings. The Board in Award No. 6507 discusses the award of Public Law Board No. 790 in some detail. It reached the conclusion that: "Based upon the entire record before us, we are unable to find that determination to be an unreasonable interpretation and application of the clause. Even if, dealing with the same issue 'ab initio', we might have reached a different conclusion than did Public Law Board 790, (it is not to be construed that we would), we deem it inadvisable to decide the matter differently at this juncture for the reasons set forth hereinabove and in the cited Awards." This affirmation of

the award of Public Law Board No. 790 has been followed in Awards 6508, 6548, 6549, 6550, 6551, 6552, 6553 and 6554. The Carrier and this Organization were parties to all of them. We affirm the findings in these Awards.

Another issue is raised in this Docket which was not directly presented or discussed in any of the above cited awards. In a letter to the General Chairman dated April 25, 1972, Assistant Chief Engineer - Power had this to say:

"If the agreement were to be interpreted as you contend this man still would not be entitled to double time. The number of E.T. employees working on Sunday, March 5, 1972 was not greater than the number of E.T. employees working on Sunday, January 17, 1971, which was the qualifying Sunday for this rule. Therefore, no E.T. employees would be entitled to double time for work performed on Sunday, March 5, 1972."

At the time Article VII was adopted, 59 electricians were regularly assigned to Sunday work. This is not in dispute. Employees contend, however, that since no electricians are now regularly assigned to Sunday work, all work performed on Sunday must be paid for at double time. The maximum number of 59 permitted to work on Sunday under Article VII without a penalty, continue the Employees, has long been exhausted.

The language in Article VII is clear, meaningful without any discernible ambiguity. It says that the number of "employees regularly assigned to Sunday work at the present time shall constitute the maximum number of employees who may be so assigned without penalty" (Emphasis added). "Present time" refers to the date when Article VII became effective, in this case January 15, 1971. The maximum number on that date was 59; it remains 59 as long as Article VII in its present form continues to be an accepted rule; that number is never exhausted for all time; it is exhausted only on those Sundays when 59 are assigned to work.

In view of the fact that 59 electricians were not assigned to work on Sunday, March 5, 1972, there has been no violation of Article VII. The claim, therefore, has no merit.

A W A R D

Claim is denied.

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Award No. 6662
Docket No. 6512
2-LI-EW-'74

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant.

Dated at Chicago, Illinois, this 22nd day of March, 1974.