

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

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Atchison, Topeka and Santa Fe Railway Company
(-Eastern Lines-

Dispute: Claim of Employee:

- (1) That the Carrier erred and violated the contractual rights of Mr. W. L. Cummings, by improperly compensating him for services rendered on his second rest day, September 14, 1971.
- (2) That, therefore, Mr. Cummings be compensated for services rendered on that date at the rate of double-time.

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 was on vacation until Sunday, September 12, 1971. He was called in to work on Monday, September 13, 1971, his first restday, and on Tuesday, September 14, 1971, his second restday. Both days were paid for at the time and one-half rate. The claim seeks to have the payment for work rendered on the second restday raised to double-time rate.

The parties are agreed that Attachment No. 3 of Memorandum of Understanding dated December 4, 1969, is controlling on these circumstances. This provision reads as follows:

"All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily 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, 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 parties join issue on whether under these circumstances, Claimant may properly be regarded as having "worked all the hours of his assignment in that work week", (that is, the week for which Tuesday, September 14, 1971 was the seventh day.)

It is the position of the Employees that Claimant's vacation was his "assignment" for the workweek of September 8 through 12, 1971. They call this Board's attention to the second paragraph of Article 4(a) of the Vacation Agreement, dated December 17, 1941:

"The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates".

We agree with Carrier that "worked all the hours of his assignment" in Attachment No. 3 can be read reasonably only as a reference to on-the-job work performance. If the parties had intended to let vacation recess stand in place of work assignments, it must be assumed that they would have included such a statement in the clause.

A W A R D

Claim denied.

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 17th day of July, 1974.