

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. 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 employee, R. J. Walter, Electrician, was deprived of the double time rate of pay worked on Sunday, January 16, 1972 - nine and one half hours - when he was called to work on the rectifier at Valley Stream Sub Station.
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 waived right of appearance at hearing thereon.

The parties reached an agreement headed ARTICLE VII - SUNDAY WORK, dated January 15, 1971. It states as follows: "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 Organization relies upon the decision of PLB No. 790 which stated, in effect, that the number of employees assigned on Sunday, January 31, 1971 exceeded the number regularly assigned because no employees were regularly assigned on Sunday at that time. In their Submission the Organization stated: "Our position is the same in this dispute." Reliance is placed upon prior Awards of this Division No's. 6507, 6508, 6548-6553.

This Referee sustained the claim for double time rate of pay in Awards 6548-6553 in which the Carrier's Submission was identical for each case. Reliance was placed upon PLB No. 790 and 6507, 6508 because the Carrier's position was the same in the handling on the property, and in the interest of furthering stability in labor relations between the parties by presenting consistent interpretation in the application of an agreement. This does not, however, close the door forever to a review of the same subject matter. When the Record now discloses facts in the handling on the property which were not clearly set forth in the Submissions of the parties in the prior cases, it would be arbitrary and stubborn to refuse to take a "new look" at the case.

In Awards 6507, 6508, it was pointed out that the, "---Carrier failed to raise certain data during the processing of the claim which it sought to interpose for the first time on the last pages of its rebuttal,---." In Awards 6548-6553, the Record of the handling on the property failed to disclose the Carrier's position clearly as evidenced by the finding that: "There does not appear to be any dispute about the claimants herein being in excess of the number of employees who were regularly assigned to Sunday work when the agreement was reached---."

In this case the Carrier made its point when it denied the claim on the property, namely, that 59 employees were regularly assigned on January 17, 1971. That number of employees remains the controlling number for the duration of the agreement. Although the language could have been more specific as to this, it is evident that regular assignments to Sunday work would be limited to this number. An extra or emergency assignment on a rest day is obviously not a regular assignment and no authority is needed to support this fact. The rate of pay would be time and one half for such assignment. This is set forth in the Carrier's letter of denial dated March 24, 1972, Carrier's Exhibit 2. The controlling number of 59 regularly assigned E.T. employees is not denied by the Petitioner.

This significant fact is recognized in Awards more recent than those relied upon by the Organization, to wit: Second Division Awards No's 6662, 6648, 6660.