

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated Public Law 91-226 enacted into law on April 9, 1970, when they failed to properly compensate Telephone Maintainer T. R. Robb on February 17, 1974, for work performed during the hours 8:00 a.m. to 3:00 p.m., on the Carrier's Electronic Public Automatic Exchange Telephone System, located at Cumberland, Maryland, for which claimant was allowed time and one-half in lieu of the double time rate applicable to employees working on their second rest day.
2. That, accordingly, the Baltimore and Ohio Railroad Company be ordered to additionally compensate Claimant Telephone Maintainer, T. R. Robb, 3- $\frac{1}{2}$ hours at the pro rata rate of pay for working on his seventh consecutive work 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 employe or employees 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.

Claimant is a Telephone Maintainer, assigned Monday through Friday. He worked all assigned hours during the week of February 11 through 15, 1974, and also worked on Saturday, February 16 from 9:00 a.m. to 5:00 p.m. (for which he was paid at the time and one-half rate). He worked seven hours on Sunday, February 17, 1974, for which he was also paid at the time and one-half rate.

Because service on the 17th of February was performed on Claimant's second rest day and constituted seven consecutive days of work, he claims that the appropriate rate of pay due him was double time, under the following rule:

"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 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 resists the claim, asserting that the work performed on February 17 was emergency service. It appears that during the week which preceded the day in question, a serious telephone line problem continually grew worse despite attempted corrective action. As a result, Engineers were assigned to the problem on Saturday, February 16. When they diagnosed the problem, it was determined that it would be necessary to work on Saturday and Sunday so as to avoid a total breakdown when the full complement of personnel was present and the system would be used at peak capacity.

The Organization argues that no emergency could exist because the various employees - such as Claimant - worked during their regular daytime hours - rather than working around the clock, and that the repairs were not completed at the conclusion of Claimant's Sunday shift. Instead, Communication Department employees completed certain work during the next ensuing week.

Carrier urges that its switchboard facility is a vital piece of equipment and that it could not function without operative communication capabilities. Moreover, it was not possible to delay repairs until the regular work week.

A determination of the dispute rests with our decision as to whether or not an "emergency" existed. Of course, that word has been the subject of consideration and, in the final analysis, we are convinced that the facts of each individual case must dictate the outcome.

We do not feel that the Awards cited by the Employees control this case. For instance, Award 6378 noted that "... the emergency contemplated is the occurrence of the unexpected; something which should not happen, all things being equal." But in that case, weather factors were a consideration and the Award noted that "cold weather is expected and can be forecast with reasonable accuracy." Award 6379 (and 6380) defined "emergency" work as "... work necessary at the time which if performed at a later time would be too late to be of any value."

Award 5408 recognized that a Carrier must have available to it an effective way to meet the problem and Award 6454 did not accept the concept that it is necessary to be confronted with an "immediate" emergency before a Carrier can act.

Based upon a consideration of the entire record, we are inclined to deny the claim. The vital importance of the communication system is conceded. The fact that the system was not totally repaired by Sunday night does not control. The record suggests that the system was functioning in an acceptable manner by that time, and needed only minor attention thereafter. But, even if the problem grew worse, rather than better, that would not detract from the "emergency" nature of the problem.

The fact that the employees did not continue working through Saturday night - but rather, went home and then returned on Sunday - is certainly a factor to be considered when the evidence is weighed. But, that factor alone does not control. It is rather obvious that the situation was deteriorating during the preceding work week, to the point that it was necessary to summon Engineers. Their appraisal apparently dictated that Sunday work was necessary to correct the problem, and we have no persuasive evidence which warrants our looking behind that determination.

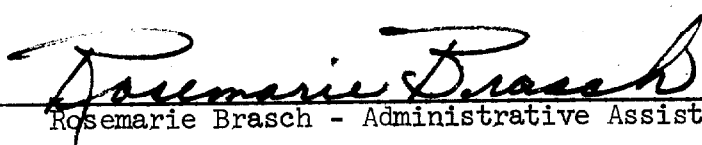
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of December, 1976.