

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

1. That the St. Louis Southwestern Railway Company/St. Louis Southwestern Railway Company of Texas violated the controlling agreement, particularly Rule 5, when they improperly deducted eight hours (8') pay from Lineman G. H. Wells' monthly rate for Saturday, August 29, 1987.

2. That accordingly, the St. Louis Southwestern Railway Company/St. Louis Southwestern Railway Company of Texas be ordered to reimburse Lineman Wells the one day's pay of eight hours (8') which they deducted and henceforth cease the practice of deducting a full day's pay without just and sufficient cause as provided for in the agreement.

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 employes involved in this dispute are respectively carrier and employes 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.

This case involves the issue of standby pay. The Claimant is employed by the Carrier as a Lineman at the Carrier's Dalhart, Texas, facility. He is paid a monthly rate, which includes payment for one standby day and one rest day each week. His normal work hours are 8:00 A.M. until 5:00 P.M. Monday through Friday, with Saturday as his standby day and Sunday as his rest day.

On Saturday, August 29, 1987, the Carrier's Houston Wire Chief and the Dalhart operator attempted to contact the Claimant to correct a problem on the dispatcher's line. On the property the Carrier contended that the Carrier's representatives attempted to call the Claimant from 9:35 P.M. Saturday evening until 11:20 A.M. Sunday morning. The Parties agree that the Carrier was unable to reach the Claimant and assigned another Lineman to perform the work at about 2:30 P.M. on Sunday, August 30.

The Claimant was docked eight hours' pay for his failure to be available when he was initially called on Saturday. The Carrier's rationale for this action is that the Claimant's monthly pay includes payment for the standby day, and since he was not available on that day, his pay should be docked accordingly.

The Organization contends, however, that an employee is required to be available for work on his standby day only during the hours he normally works, i.e., 8:00 A.M. to 5:00 P.M. Because both Parties agree that the call for the Claimant did not go out until after 5:00 P.M. on the date in question, the Organization argues that the Claimant fulfilled his standby obligation for that day and his pay should not have been docked. In contrast, the Carrier contends that the Claimant was required to stand by for a full twenty-four hour period beginning 8:00 A.M. Saturday morning and ending 8:00 A.M. Sunday morning.

Both parties rely upon Rule 5 of the controlling Agreement, which covers monthly rated employees. Although the Rule does not explicitly address this situation it does state,

"No overtime is allowed for service performed in excess of eight (8) hours per day. However, no time shall be deducted unless the employee lays off of his own accord, is furloughed, on leave of absence, his position is abolished, he is suspended for cause or is displaced under the rules of this agreement... Employees filling these positions shall be assigned one (1) regular rest day per week, Sunday if possible, which will be the 24-hour period beginning at the ordinary starting time on work days."

This issue was recently addressed in another case before this Board, involving the same Parties and the same Agreement. Second Division Award 11698. There the Board cited two earlier Second Division Awards which support the Carrier's position. In an early Award this Board reasoned,

"Clearly it was intended that only holiday work was to be paid for on the calendar day basis, while the regular assigned days, standby days, Sundays and rest days were to be paid for in the usual and ordinary manner, to-wit: That a day is the 24-hour period immediately following the starting time of the daily assignment. This being true, Claimant's standby day commenced at 8:00 a.m., Saturday, May 6, 1950, and ended at 8:00 a.m., Sunday, May 7, 1950."

(Second Division Award 1485).

In Second Division Award 5248 this Board addressed the issue even more directly:

"There is no disagreement that the monthly rate includes services performed on the availability date. Employees argue only that Claimant's availability day is not a 24-hour day, but only his same regularly assigned eight hours which he works Monday through Friday. The Carrier contends that the availability day is the full 24-hour period. A monthly paid employee may or may not work on his availability day. Whether he does or does not work on that day he is paid the same monthly rate. What hours he may be required to work on his availability day depends upon the necessities of the Carrier's business. Claimant's availability day commences at 7:00 a.m. on Sunday to 7:00 a.m. on the following Monday. He is required to be available for work within that 24-hour period and he is charged with the duty to keep the Carrier advised where he can be reached if and when he is needed. If he is not available when called, the Carrier may deduct a day's pay from his monthly compensation. Inconvenience is not material to this issue. This Division has established the principle that a standby or availability day is 24-hours commencing with the employee's regular starting time."

These earlier decisions, and our most recent decision in Award 11698, describe the interpretation which this Board has given to these clauses, and the Organization has offered no decisions taking a contrary approach.


The Organization has pointed out that the Carrier, in the handling of this case on the property, contended that the facts involved in the case addressed by Award 11698 were different than the facts in this case. However, the Board concludes from the evidence before it that the facts pertinent to the main issue in this case, i.e., the length of time an employee must remain on standby, are sufficiently similar that the same result should apply. Furthermore, the Organization has not pointed out any factual differences between the two cases which would merit a different result. Therefore this Board will follow the precedent set by Award 11698, and deny this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1991.