

SPECIAL BOARD OF ADJUSTMENT NO. 488

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 35

STATEMENT "Claim of the System Committee that:
OF CLAIM:

1. The Carrier violated the Agreement by requiring members of Extra Gang No. 12125 to work Saturdays and Sundays at their pro rata rate and then assigned to them the following Tuesdays and Wednesdays as rest days, commencing with October 7, 1961 and continuing each Saturday and Sunday until November 5.

2. The Carrier now compensate Track Extra Gang Foremen Lee Crawford and Trackmen John Richardson, William Richards, Charles Fitzgerald, Willie Young, Carl Partlow, and Miles Wagner for this difference in pay between what they received at the straight time hourly rate and what they should have received at penalty rate for their services performed on Saturdays and Sundays, October 7, 8, 14, 15, 21, 22, 28, 29, and November 4 and 5, 1961."

FINDINGS: Claimants here were members of Extra Gang No. 12125, on a scheduled Monday through Friday basis; Saturday and Sunday, rest days. They were headquartered at Camden Station, Baltimore. The gang was abolished upon proper notice.

Carrier then (October 6, 1961) issued bulletin No. 37 re-establishing the extra gang on a Thursday through Monday basis, with Tuesday and Wednesday as rest days.

The reason assigned by Carrier is that the City of Baltimore ordered it to perform certain work on B&O tracks which operate through the city streets, and the City directed that this work could only be performed on Saturdays and Sundays.

The work started October 7, 1961 and was completed on November 5, 1961 when Carrier restored the gang to a Monday through Friday -- Saturday and Sunday, rest days -- basis.

We have carefully examined the position and argument of the Carrier in justification of its action, and can only conclude that Carrier's action was taken in order to evade the payment of overtime to these claimants on the 5 week-ends required to do the necessary work.

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We do not agree with Carrier Arguments that prior to October 5 this gang was involved in a five-day operation, and that thereafter it was a seven-day operation. It was a five-day operation before, during and after the period covered by this claim. The positions in this gang were filled on a five-day basis at all times.

And under such circumstances Rule 17 (b) says flatly "the days off will be Saturday and Sunday."

Thus, had Carrier conformed to the requirements of the Agreement, it (a) could have assigned men from the extra list; or (b) could have worked these claimants (as it did) at overtime rates.

Carrier also offers as a defense that the "operational requirements in this particular case were such that the Management could not perform the necessary work on other than Saturdays and Sundays due to the requirement of Baltimore City"; yet we must add that the particular work required by the City of Baltimore was performed on only two days of each week, and totalling ten days in all, it was only a temporary requirement.

There is in this record argument in behalf of the Carrier that there "was no attempt on the part of the Organization.... to arrange for a conference to discuss the matter or suggest any preliminaries toward any situation whereby some agreement might be reached."

The facts are Claimants held regular assignments on a Monday through Friday basis with Saturdays and Sundays as rest days. Carrier was the moving party in changing these assignments for the purpose already stated. It posted its bulletin October 6 announcing a change to be effective October 7, and if there was any requirement for a conference, the responsibility rested with the moving party.

We conclude that the manner in which Carrier met its temporary operational requirements here was a violation of Claimant's rights under Rule 17.

AWARD

Claim sustained.

(s) Edward A. Lynch

Edward A. Lynch, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Employee Member

(s) T. S. Woods

T. S. Woods, Carrier Member

Dated at Baltimore, Md.,
this 28th day of August, 1963.