

Award No. 1640

Docket No. 1608

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Phillip G. Sheridan when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Yard Foreman T. T. Lehman for time and one-half time instead of straight time allowed Dec. 4, 1947 account used as Yardmaster and working seven consecutive days as Yardmaster, Painesville, O.

EMPLOYEES' STATEMENT OF FACTS: Memorandum of Conference was entered into at Akron, Ohio, March 8, 1948 between Superintendent C. T. Williams, representing the Management, and Local Chairman F. C. Roberts of the Trainmen's Committee, at which time the following Statement of Facts was incorporated into the referred to Memorandum by the Committee:

"COMMITTEE'S STATEMENT OF FACTS:

Yard Foreman T. T. Lehman worked as an extra yardmaster at Painesville on November 29 and 30, also Dec. 1, 2, 3, 4, 1947, December 4 being his seventh consecutive day. He worked on Dec. 1 from 7 A. M. to 3 P. M. and from 11 P. M. to 7 A. M."

"Superintendent's Statement of Facts", as appearing in the Memorandum of Conference, reads as follows:

"SUPERINTENDENT'S STATEMENT OF FACTS:

Yard Foreman T. T. Lehman worked as an extra yardmaster at Painesville on November 29 and 30, also Dec. 1, 2, 3, 4, 1947; on Dec. 1 he worked 7 A. M. to 3 P. M. and 11 P. M. to 7 A. M."

POSITION OF EMPLOYEES: In the instant case the Employees desire to establish that case was handled in the usual and customary manner on the property and that there is no dispute between the parties relative to the further progressing of this case, although same is of long standing.— That is, the case was progressed under Trainmen's General Committee Docket 5285/470, Management Case No. 1642, and has been further identified as "Review Case 1427", whereby under an understanding existing between the Committee and the Management the Committee is privileged to prosecute this claim through the appropriate tribunal established under the Railway Labor Act.

For the information of your honorable Board, under date of May 18, 1948 the Carrier's former Manager Labor Relations, Mr. W. G. Carl, declined the claim, in his decision reading as follows:

"THE BALTIMORE AND OHIO RAILROAD COMPANY

Baltimore 1, Md., May 18, 1948

Mr. T. J. Lynch, General Chairman
Brotherhood of Railroad Trainmen
11705 Detroit Ave., Lakewood 7, Ohio

Case No. 1642

Dear Sir:

Referring to our conference on May 17, 1948, when we discussed the following:

'Claim of Yard Foreman T. T. Lehman for time and one-half time instead of straight time allowed December 4, 1947 account used as Yardmaster and working seven consecutive days as Yardmaster, Painesville, Ohio.'

The facts are Yard Foreman T. T. Lehman worked as an extra yardmaster at Painesville on November 29 and 30, also December 1, 2, 3, 4, 1947; on December 1 he worked 7:00 A. M. to 3:00 P. M. and 11:00 P. M. to 7:00 A. M.

Article 4(c) of the Yardmasters' Agreement provides that an extra or unassigned yardmaster who works seven consecutive days shall be paid at the rate of time and one-half for the seventh day. As advised you in discussing this case in conference, this rule covers calendar days, and not tours of duty. Therefore, I see no merit to this claim and it is respectfully declined.

Yours very truly,

/s/ W. G. Carl
Manager Labor Relations"

Subsequent prosecution took place between the Committee and the Management. As recently as December 3, 1959, however, the Management has repeatedly denied the claim.

Article 4 of the applicable collective bargaining agreement, as revised March 1, 1947, reads as follows:

"ARTICLE 4
RELIEF DAYS

(a) Regularly assigned Yardmasters will be assigned one (1) regular relief day in seven (7), without deduction for such relief day from their established monthly rate, provided they have performed service as a yardmaster or General Yardmaster on not less than three (3) days in the six (6) day period next preceding the regularly assigned relief day, and if required to work on such regularly assigned relief day will be paid therefor at the rate of time and one-half, based on their daily rate. Relief days shall be arrived

at by conference between the Committee and the General Yardmaster or other proper officer.

(b) Where relief requirements at any point make it possible to assign a relief Yardmaster regularly for six (6) days in seven (7) consecutive days, relief Yardmaster positions shall be established by bulletin and filled in accordance with Article 9.

(c) An extra or unassigned Yardmaster who works seven (7) consecutive days shall be paid at the rate of time and one-half for the seventh (7th) day, based on the daily rate of the position worked on the seventh (7th) consecutive day of service."

The Trainmen's General Committee requested an interpretation of the rule from the General Chairman of the Yardmasters' Committee on The Baltimore & Ohio Railroad; and under date of November 10, 1959 General Chairman R. M. Semple of the Yardmasters' Organization addressed the following communication to the General Chairman of the Trainmen's Committee, Mr. William C. Lester, which is hereby quoted for the information of the Board:

"Niles Ohio, November 10, 1959

Mr. William C. Lester

* * *

Your letter of November 3, 1959 referring to letter from W. G. Carl to Mr. T. J. Lynch about claim for 'Yard Foreman T. T. Lehman, Painesville, Ohio.'

Article 4—paragraph (c) 'An extra or unassigned Yardmaster who works seven (7) consecutive days shall be paid at the rate of time and one-half for the seventh (7th) day, based on the daily rate of the position worked on the seventh (7th) consecutive day of service.'

My interpretation and the proper one of the above rule in your case of Mr. T. T. Lehman is that he is entitled to time and one-half for December 4, 1947 because after he had worked 6 days as a yardmaster he is entitled to time and one-half for the seventh day. Otherwise if a yardmaster works 6 yardmaster days in five days he could be laid in the next day but if he is worked the next day he must be paid time and one-half as that is considered his seventh day.

/s/ Robert M. Semple
Robert M. Semple
General Chairman"

The attention of the members of the Fourth Division is directed to the specific language appearing in Paragraph (c) of Article 4, captioned "Relief Days", wherein the rule states that time and one-half rate of pay will be paid for the seventh (7th) day, based on the daily rate of the position worked on the seventh (7th) consecutive day of service. The seventh consecutive day of service, for which the Committee contends claimant is entitled to time and one-half rate, was worked by Extra Yardmaster T. T. Lehman on December 4, 1947. The members of the Board will note the term "seventh (7th) consecutive day of service". The rule does not state "consecutive calen-

dar day", but does state "seventh (7th) consecutive day of service". The intended application of this rule is crystal-clear—that is, an extra or unassigned yardmaster is to be compensated at time and one-half rate on the seventh day that he performed compensated service for the account of the Carrier. Such were the facts and circumstances in this case, and claimant was denied time and one-half rate for the seventh day of service.

Paragraph (a) of Article 3 of the collective bargaining agreement for yardmasters in effect at the time this claim originated, which rule is captioned "Basic Day, Overtime, Starting Time and Call", provides as follows:

"(a) Eight (8) consecutive hours or less shall constitute a day's work, except as provided in paragraph (d) of this Article."

It is significant to note that a day's work under the rule is eight (8) consecutive hours, and not a calendar day.

Webster's New International Dictionary, Second Edition, Unabridged, defines the word "consecutive" in part as follows:

"succeeding one another in a regular order, or with uninterrupted course or succession".

It is also a fact that the work "successive" is synonymous with the word "consecutive".

In view of the above, an affirmative award is requested.

It is affirmatively stated that all the data submitted herein has been presented to the Management.

Oral hearing is waived unless requested by the Carrier.

CARRIER'S STATEMENT OF FACTS: Basically, there is no dispute between the parties here as to what constitutes the factual record.

The instant claim originated in a Memorandum of Conference held in the Superintendent's office at Akron, Ohio, March 8, 1948, entered into between Superintendent C. T. Williams and Local Chairman F. C. Roberts of BRT Lodge 470. In this Memorandum of Conference the "Committee's Statement of Facts" was as follows:

"Yard Foreman T. T. Lehman worked as an extra yardmaster at Painesville on November 29 and 30, also Dec. 1, 2, 3, 4, 1947, December 4 being his seventh consecutive day. He worked on Dec. 1 from 7 A. M. to 3 P. M. and from 11 P. M. to 1 A. M."

In that same Memorandum of Conference the "Superintendent's Statement of Facts" read:

"Yard Foreman T. T. Lehman worked as an extra yardmaster at Painesville on November 29 and 30, also Dec. 1, 2, 3, 4, 1947; on Dec. 1 he worked 7 A. M. to 3 P. M. and 11 P. M. to 7 A. M."

It may be fairly presumed that the failure or inability of the parties to agree to a "Joint Statement of Facts" in this claim was the Superintendent's reluctance to subscribe to the Committee's rather argumentative

statement that “* * * December 4 (was) his seventh consecutive day. * * *.” But otherwise there is no material dispute between the parties as to the factual record.

The claimant, Yard Foreman T. T. Lehman, worked as an extra yardmaster at Painesville on November 29 and 30, also December 1, 2, 3, 4, 1947. On December 1 he worked 7 A. M. to 3 P. M. and 11 P. M. to 7 A. M.

For services performed on December 4, 1947 he was compensated at the straight time rate of pay applicable to an extra yardmaster at Painesville. The Trainmen's Committee contends that he was properly entitled to punitive (time and one-half) rate of pay for service performed on that date. The Committee bases its claim on an allegation that the claimant worked seven consecutive yardmaster tricks or tours of duty.

The Committee cites and relies upon Article 4 (c) of the Yardmasters' Agreement.

This claim was discussed on the property of this Carrier on appeal on May 17, 1948. It was declined in a letter to the Committee dated May 18, 1948. It is only now being handled to a labor board of competent jurisdiction, over fourteen (14) years after the date of claim.

POSITION OF CARRIER: It is the position of the Carrier in this case that the claim made seeking punitive instead of straight time rate of pay for services the claimant performed on December 4, 1947 is without merit. The Carrier submits as follows:

The rule at issue: In this dispute the Brotherhood of Railroad Trainmen asserts that its interpretation of Article 4 (c) of the current agreement between this Carrier and its Yardmasters, represented by the Railroad Yardmasters of America, requires the payment of this claim.

Article 4 of the agreement between this Carrier and the Yardmasters represented by the Railroad Yardmasters of America as revised to and including March 1, 1947, reads as follows:

“ARTICLE 4 RELIEF DAYS

(a) Regularly assigned Yardmasters will be assigned one (1) regular relief day in seven (7), without deduction for such relief day from their established monthly rate, provided they have performed service as a yardmaster or General Yardmaster on not less than three (3) days in the six (6) day period next preceding the regularly assigned relief day, and if required to work on such regularly assigned relief day will be paid therefor at the rate of time and one-half, based on their daily rate. Relief days shall be arrived at by conference between the Committee and the General Yardmaster or other proper officer.

(b) Where relief requirements at any point make it possible to assign a relief Yardmaster regularly for six (6) days in seven (7) consecutive days, relief Yardmaster positions shall be established by bulletin and filled in accordance with Article 9.

(c) An extra or unassigned Yardmaster who works seven (7) consecutive days shall be paid at the rate of time and one-half for the

seventh (7th) day, based on the daily rate of the position worked on the seventh (7th) consecutive day of service.”

Since the claimant in this case was an extra yardmaster only paragraph (c) of Article 4 is germane for interpretation pertinent to a disposition of the instant claim. It is the position of the Brotherhood of Railroad Trainmen that the language “consecutive days” and consecutive day of service” refers to “tricks” or “tours of duty”; on the other hand, it is the position of this Carrier that this language contained in Article 4 (c) is intended to refer, as the plain language of the rule certifies, to “calendar days”.

There is more than ample basis for accepting the Carrier’s interpretation of the language of the rule.

The historical background of Article 4 (c) of the current agreement supports the Carrier’s conclusion:

Article 4, captioned “Relief Days” appearing in the Yardmasters’ Agreement as revised to June 1, 1940, read as follows:

“ARTICLE 4
RELIEF DAYS

Yardmasters regularly assigned and who work seven (7) days per week will be granted two (2) days off each month with pay. The two (2) rest days will not be cumulative, but must be taken each month. The two (2) rest days per month shall be arrived at by conference between the men affected and the General Yardmaster or other supervising officer.

This article applies to regularly assigned relief yardmasters whose assignment covers the calendar days in a month less two (2) days.

Interpretation—Effective February 1, 1930, in the application of this article, yardmasters will be granted two (2) relief days with pay each calendar month provided they are not off in excess of two (2) days during the month in addition to their relief days.”

Article 4, captioned “Relief Days” appearing in the Yardmasters’ Agreement as revised to Sept. 1, 1944, reads as follows:

“ARTICLE 4
RELIEF DAYS

(a) Yardmasters regularly assigned and who work seven (7) days per week will be granted two (2) days off each month with pay. The two (2) rest days will not be cumulative, but must be taken each month. The two (2) rest days per month shall be arrived at by conference between the men affected and the General Yardmaster or other supervising officer.

(b) This article applies to regularly assigned relief yardmasters whose assignment covers the calendar days in a month less two (2) days.

(c) Yardmasters who are required to work on their designated relief day will be paid therefor at the rate of time and one-half. An

extra or unassigned yardmaster will be paid at the rate of time and one-half for the fourteenth (14th) consecutive day of service."

Present Article 4 (c) of the Yardmasters' Agreement derived from a supplemental agreement effective on this property as of October 16, 1945.

Under date of August 15, 1945 General Chairman John Cullinan of the Railroad Yardmasters of America served notice of that organization's desire to revise the existing agreement. One such proposal outlined in General Chairman Cullinan's letter of August 15, 1945, read as follows:

"TIME ALLOWANCES AND HOURS OF SERVICE

(a) Eight (8) consecutive hours or less shall constitute a day's work.

(b) All time worked in excess of eight (8) hours in any twenty-four (24) hour period shall be paid for at one and one-half (1½) times the pro rata rate.

(c) Yardmasters shall be paid at one and one-half (1½) times the pro rata rate for all service performed on Sundays and the following legal holidays: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday the day observed by the State, Nation, or by Proclamation, shall be considered a holiday), and all other holidays established by State or Nation.

(d) The assignments of Yardmasters shall be six (6) days per week. The monthly rates of pay are based on six (6) days per week assignments.

(e) A Yardmaster who works on his regularly designated rest day will be paid therefor at one and one-half times the regular rate, in addition to the regular monthly rate.

(f) Where relief requirements regularly consist of six (6) days work per week, relief yardmaster positions will be established. Yardmasters assigned to relief positions will take the rates of pay, starting time, and conditions of the positions relieved.

(g) Unassigned Yardmasters required to work as such on seven (7) consecutive days shall be paid extra for the seventh day at one and one-half (1½) times the pro-rata rate."

Following negotiations on the property the parties to the contract executed a so-called "Supplemental Agreement" dated September 27, 1945 that was effective October 16, 1945. That part of this Supplemental Agreement that dealt with Article 4 of the then existing agreement read as follows:

"3—Article 4, with interpretation, is hereby eliminated in its entirety and is superseded by the following:

'ARTICLE 4

(a) Regularly assigned Yardmasters will be assigned one (1) regular relief day in seven (7), without deduction

for such relief day from their established monthly rate, provided they have performed service as a Yardmaster or General Yardmaster on not less than three (3) days in the six (6) day period next preceding the regularly assigned relief day, and if required to work on such regularly assigned relief day will be paid, therefor at the rate of time and one-half, based on their daily rate. Relief days shall be arranged at by conference between the Committee and the General Yardmaster or other proper officer.

(b) Where relief requirements at any point make it possible to assign a relief Yardmaster regularly for six (6) days in seven (7) consecutive days, relief Yardmaster positions shall be established by bulletin and filled in accordance with Article 9.

(c) An extra or unassigned Yardmaster who works seven (7) consecutive days shall be paid at the rate of time and one-half for the seventh (7th) day, based on the daily rate of the position worked on the seventh (7th) consecutive day of service.’”

Observe that throughout the history of Article 4 (c) reference is consistently made to “consecutive days” or to “consecutive days of service.” Contrary to the position expressed by the Brotherhood of Railroad Trainmen, there is not even the slightest inference or implication that the language appearing in Article 4 (c) has reference to “tricks” or to “tours of duty”. The reference, taken consistently throughout the years, is to calendar “days” of service.

Article 4 (c) as it appears in the current agreement derives directly from the Supplemental Agreement effective as of October 16, 1945, and the parties to that so-called “Supplemental Agreement” consistently maintained that same language and interpretation.

Conclusions deriving from the Supplemental Agreement effective October 16, 1945:

Prior to October 16, 1945 yardmasters coming under the scope of the Yardmasters’ Agreement on this property who were regularly assigned and who worked seven days per week were granted two rest days off each month with pay. As a result of the negotiations with the Committee representing the Railroad Yardmasters of America it was agreed between the parties that assignments of yardmasters would be six days per week. By reason of this change consideration was given to changing the rule covering extra or unassigned yardmasters as to when they would receive the punitive rate of pay for yardmaster service. The rule in effect prior to October 16, 1945 provided that an extra or unassigned yardmaster would be paid at the rate of time and one-half for the fourteenth consecutive day of service. The new rule (present Article 4 (c) of the current agreement) provided that unassigned yardmasters required to work as such on seven consecutive days would be paid at the rate of time and one-half for the seventh day based on the daily rate of the position worked on the seventh consecutive day of service. Under the rule in effect prior to October 16, 1945 an extra or unassigned yardmaster could be required to work two tours of duty on a calendar day without receiving the punitive rate of pay. The only requirement under the rule was that if the unassigned yardmaster worked on thirteen consecutive days regard-

less of the number of tours of duty performed in that time he would not receive the punitive rate of pay until he had worked on the fourteenth consecutive calendar day. The only change in the rule itself was to provide for the punitive rate of pay on the seventh consecutive day. There was no other change in the meaning, intent, or application of the rule prior to or after October 16, 1945, the effective date of the so-called "Supplemental Agreement."

Carrier's summary statement:

While perhaps not particularly germane to the instant case (the claim arises in the year 1947), during the year 1949 the parties to the contract, the Yardmasters' Committee and the Carrier reached agreement that "* * * Effective as of May 1, 1949 when extra yardmasters are required to fill two tours of duty where there is no break between the relieving time of the first tour of duty and the starting time of the second tour of duty, such extra yardmasters will be allowed the punitive rate of pay for the second tour of duty, it being further understood that this does not apply where there is a definite break of time in the two tours of duty."

Here then was recognition that prior to May 1, 1949 even though two tours of duty might have been performed on the same calendar day, still an extra yardmaster would not be entitled to the punitive rate of pay for the second tour of duty. Even after May 1, 1949 such an extra yardmaster would not be entitled to the punitive rate of pay where there was a definite break of time in the two tours of duty. In this agreement, as well as in the balance of the rules appearing in the Yardmasters' Agreement, the critical factor was service performed on a "calendar day", not on a trick or tour of duty.

There is no rule appearing in the Yardmasters' Agreement to support the claim made here. The Carrier submits that this claim is without merit and respectfully requests that the claim be denied. Oral hearing is requested.

OPINION OF BOARD: The claimant worked as an extra yardmaster on November 29 and 30, also December 1, 2, 3 and 4, 1947, December 4 being his seventh consecutive day. He worked December 1, from 7 A. M. to 3 P. M. and from 11 P. M. to 7 A. M.

**"ARTICLE 4
RELIEF DAYS**

(a) Regularly assigned Yardmasters will be assigned one (1) regular relief day in seven (7), without deduction for such relief day from their established monthly rate, provided they have performed service as a yardmaster or General Yardmaster on not less than three (3) days in the six (6) day period next preceding the regularly assigned relief day, and if required to work on such regularly assigned relief day will be paid therefor at the rate of time and one-half, based on their daily rate. Relief days shall be arrived at by conference between the Committee and the General Yardmaster or other proper officer.

(b) Where relief requirements at any point make it possible to assign a relief Yardmaster regularly for six (6) days in seven (7) consecutive days, relief Yardmaster positions shall be established by bulletin and filled in accordance with Article 9.

(c) An extra or unassigned Yardmaster who works seven (7) consecutive days shall be paid at the rate of time and one-half for the seventh (7th) day, based on the daily rate of the position worked on the seventh (7th) consecutive day of service."

The contractual language lends no support to the Organization's claim.

The rule, Article 4(c); states that an employe who works "seven consecutive days will be paid the punitive rate for the seventh (7th) consecutive day of service." The Organization argues the word "day" should be construed as a "tour of duty." Now a "tour of duty" for most employes is an eight-hour period. What it is saying, therefore, is that an employe is entitled to premium pay for his seventh (7th) consecutive "tour of duty." The definition of the word "consecutive" has been submitted as meaning "* * * succeeding one another in regular order, or with uninterrupted course or succession."

An analysis of the facts in this case refutes that there was consecutive employment. On December 1, 1947, claimant worked from 7:00 A. M. to 3:00 P. M. and then from 11:00 P. M. to 7:00 A. M. There was no uninterrupted course or succession, for if there was the claimant would have completed seven (7) tours in two and one-third (2 $\frac{1}{3}$) days.

It would appear that the claimant's sixth day started at 7:00 A. M. on December 4th and ended at 7:00 A. M. on December 5th. Had he been used between 7:00 A. M. on December 5th to 7:00 A. M. on December 6th, he would have been used on his relief day and entitled to premium pay. He was not so used. Therefore, he was not entitled to compensation.

We concur with the statement set forth in Fourth Division Awards 1224 and 1260. The latter states "Confronted with alternatives, capable of leading to a logical, or an illogical result, consistent procedure and construction dictate the adoption of the former."

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe 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.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 14th day of May 1962.