

Award No. 899

Docket No. 850

2-TC-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 68, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) The carrier violated Rule 3, the fourth paragraph of Rule 4 and Rule 10 of their agreement with their shop craft employes by refusing to pay J. R. Hedgepath, carman helper, at the rate of time and one-half for service performed on Sunday, January 11th, 1942.

(b) That the carrier be required to pay J. R. Hedgepath at the rate of time and one-half for this service as provided by these rules.

EMPLOYEES' STATEMENT OF FACTS: At Nashville, Tennessee, four car inspectors and two train yard oilers, regularly assigned to work seven days a week, are only paid straight time for work performed on Sundays and holidays.

On Saturday, January 10, 1942, J. R. Hedgepath, carman helper, who is assigned to work on the repair track from 7:30 A. M. until 4:00 P. M. six days per week, Monday through Saturday, was approached by W. J. Cooper, a train yard oiler, who is regularly assigned to work from 5:00 A. M. until 1:30 P. M., seven days per week, and was told by Mr. Cooper that Mr. T. A. Saunders, master car builder, had given him permission to be off on Sunday and Monday, provided that he (Mr. Cooper) could secure someone to work his vacancy. Mr. Hedgepath told Mr. Cooper that he would fill the vacancy. Later in the day Mr. Saunders came by where Mr. Hedgepath and Mr. J. O. Jackson, whom he was helping, were working and asked Mr. Hedgepath if he was going to fill the vacancy of Mr. Cooper and was told by Mr. Hedgepath that he was. Nothing whatever was mentioned by either Mr. Cooper or Mr. Saunders concerning the rate of pay that would be paid Mr. Hedgepath for filling the vacancy. Mr. Hedgepath filled the vacancy and as usual claimed time and one-half for his service as provided by the rules of the agreement. In a letter addressed to Mr. Hedgepath by Mr. Saunders under date of January 13, 1942, he declined to pay the claim at the rate of time and one-half. After receiving this letter Mr. Hedgepath made a grievance of the case and turned it over to the carmen's committee for proper handling.

POSITION OF EMPLOYEES: We quote herein Rule 3, the fourth paragraph of Rule 4 and Rule 10 of the Tennessee Central agreement;

exercised seniority, which the carrier felt he should have done in line with past practice, it is clear he would have come under the exception of Rule 10. The circumstance which brought this situation about, i. e., the car department helpers cooperatively declining the work, notwithstanding the practice to the contrary, was sharply brought to the attention of Mr. Gantt and the general committee in discussion of the case referred to. We agreed only that the employe in the case under discussion at that time did not exercise seniority in filling the vacancy, which permitted payment of the overtime rate to him under the provisions of Rule 10. We made no commitment in this respect in other than the case under discussion and the others mentioned in event investigation showed them to be parallel to the one discussed.

In the case now before your Board, the petitioner voluntarily filled the vacancy after it was offered the helpers in order of seniority, and further, this was done through arrangement between the regularly assigned employe and the petitioner. This was strictly in line with past practice, it being immaterial to the carrier which employe works an assigned preference job so long as he is competent. The circumstances here are entirely different from those the petitioner referred to as similar. The petitioner filled the vacancy by virtue of his being the senior helper desiring the work and not as a consequence of an act of the carrier.

The carrier submits that there was no violation of any of the rules of the agreement, and respectfully requests that the claim be denied.

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 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.

Claimant was not assigned to work on Sundays, and under Rule 3 was entitled to be paid at the rate of time and one-half for the work performed on Sundays.

AWARD

Claim (a) Sustained.

Claim (b) Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 7th day of June, 1943.