

Award No. 1022

Docket No. 962

2-KCT-FO-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the controlling agreement and Rule 9 thereof, the carrier be ordered to additionally compensate, at the rate of time and one-half, the following employees for the service which they performed on the dates opposite their respective names:

- | | | |
|----------------|-----------------|---|
| 1—E. Jenkins | 8 hours | December 24, 1942. |
| 2—Wm. Brown | 8 hours each on | December 31, 1942, January 21
and 28, and February 4 and 11, 1943. |
| 3—James McGee | 8 hours each on | January 9, 16, 23 and 30, Feb-
ruary 6, 13, 20 and 27, 1943. |
| 4—Chas. Walton | 8 hours each on | January 23 and March 6, 1943. |

EMPLOYES' STATEMENT OF FACTS: On or about Friday, February 20, 1942, the carrier bulletined the aforesaid employees, et al, to go back on six days per week, and the notice is herewith submitted and identified as Exhibit A.

These claimant employees were assigned a regular day off each week as indicated below—

1—Jenkins	Thursday
2—Brown	Thursday
3—McGee	Saturday
4—Walton	Saturday

and in conformity with a prior procedure, as disclosed by a document addressed to "All concerned," dated September 4, 1939, submitted and identified as Exhibit B.

These claimants were ordered to report for work on their regular assigned day off each week at the will of the officers of the carrier in charge, and claims for time and one-half for such days have been denied by the carrier.

The controlling agreement is dated effective April 6, 1939.

POSITION OF EMPLOYES: In support of our claim in this case, your attention is called to Rule 9, which reads as follows:

"Employees called or required to report not continuous with regular assigned work period will be paid on the minute basis at rate and one-half with a minimum of two hours even though not used."
(Underscoring ours)

subscribe to that meaning of the rules, but, if the "regular assigned work period" in Rule 9 were held to mean the "weekly" work period, then the "regular working period" and "regular assignment" in Rules 7 and 8, respectively, would refer only to a "weekly" work period and rate and one-half would not have to be paid for overtime and calls on any one day, but only after the full **weekly** assignment was worked.

In support of its contention that the words "regular assigned work period" mean the **daily** work period, the carrier refers this Division of the Board to Award No. 239, rendered by it in Docket No. 240, System Federation No. 38 vs. this carrier. There, in contrast to the position here, it will be noted, the employes contended for rate and one-half for time worked by George Meeker on a call from 8:00 P. M. to 4:30 A. M. for the reason that his "**regular assigned work period**" was from 8:00 A. M. to 4:30 P. M. **daily**, and, therefore, he had performed service not continuous with his "**regular assigned work period**." The Board, in sustaining the claim under the provisions of Rule 8, which is identical with Rule 9 in this case, ruled, in effect, the "**regular assigned work period**" for Meeker was his **daily** assignment from 8:00 A. M. to 4:30 P. M.—therefore, since the crux of this present dispute is whether the words "regular assigned work period" in Rule 9 refer to the **daily** work period or refer to the **weekly** work period, the carrier asserts that the Board's decision in Award 239 definitely established the fact that it is the **daily** work period that is meant in the wording of Rule 9.

In addition to the reference to Award 239, the carrier invites the Board's attention to Award No. 1016, Docket No. MW-964, rendered by the Third Division of the National Railroad Adjustment Board, with Mr. Wiley W. Mills, referee, participating. That Award, like Award 239, is pertinent to the present case because the rule claimed to have been violated in that docket contains the words "not continuous with the **regular work period**." The Rule referred to reads as follows:

"Rule 40. Except as otherwise provided in these rules, employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of three (3) hours for two (2) hours' work or less. If held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis."

The above rule appears in the agreement in effect between the Denver & Rio Grande Western Railroad Company and the Brotherhood of Maintenance of Way Employes, and it will be noted it is a call rule comparable with Rule 9 involved in the instant claim. The facts in the case covered by Award 1016 are briefly as follows:

The employes' regular tour of duty was from 8:00 A. M. to 5:00 P. M. They were called at 5:45 P. M. one evening to clear a wreck and worked until 5:45 P. M. the next evening. The carrier paid these employes rate and one-half for the time between 5:45 P. M. and 8:00 A. M. the next day, but only straight time thereafter, or from 8:00 A. M. until 5:00 P. M., as those hours, from 8:00 A. M. to 5:00 P. M., were the "regular work period." The Board denied the claim of the employes for rate and one-half for the entire period worked, ruling that Rule 40 had not been violated, inasmuch as the carrier properly paid straight time for services performed during the regular work period.

The carrier submits that its interpretation of the meaning of the phraseology of Rule 9 is in conformity with the interpretations in the cases before the Board cited herein, and is in consonance with the intent of the rule when it was negotiated and with the past application thereof, and that being so, the claim is without justification.

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.

The record in the instant case discloses there was an arrangement in effect whereby the service was protected seven days per week by providing a relief day so that the weekly assignment was in reality six days per week.

Between December, 1942 and March, 1943, the claimants named were used in a number of instances on a seven day assignment for which they were paid straight time.

The employes base their claim on the provisions of Rule 9 reading:

"Employes called or required to work not continuous with regular assigned work period will be paid on the minute basis at rate and one half with a minimum of two hours even though not used."

The arrangements which were made for one day off duty in each seven did not modify the provisions of Rule 9 and this rule therefore supports the claim of employes.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of July, 1944.