

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)
THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—That Machinists M. Patrick, A. Westfall, R. Miozzi, P. Petrone and M. Dzieleski, and Machinist Helper G. Likona, employed at Harmon, N. Y., Engine House, should be paid at the rate of time and one-half for work performed on engine 5313 on Sunday, October 28, 1934.

JOINT STATEMENT OF FACTS.—Locomotive 5313 had been out of service at Harmon Engine House since October 3, 1934, for the renewal of sixty (60) scattered flues and monthly inspection work. There were 17 hours actual time worked by the machinists for which claim is made. The 5 machinists and helper were all employed on the second trick from 3:45 P. M. to 11:45 P. M., at the Harmon Engine House.

POSITION OF EMPLOYEES.—We contend locomotive 5313 was a dead work job and does not come under the category of work of running repair and inspection forces, as this locomotive had been at Harmon Engine House for approximately three weeks for heavy repairs.

Engine 5313 was at Harmon Engine House 25 days, there was ample time to make the necessary repairs and have the engine ready for dispatchment on a week day. The fact that management contends the work was ordinary running repairs has no standing in the case, as any job can be subdivided to bring it within any category, in this case and all other cases of work being done on an engine, the work must be considered as one unit; on which the work has not, or cannot be done, within the time prescribed by the current rules and working agreement.

POSITION OF CARRIER.—Locomotive 5313 had been out of service since October 3, 1934, for renewal of sixty (60) scattered flues and monthly inspection work. When the material had been received we had an accumulation of work making it necessary to set back the work on this locomotive until October 25, 1934.

On Sunday, October 28, 1934, the necessary machinists' work had been completed, except the replacement of the superheater smoke box cover and the fitting of the right front and main rod brasses and inspection of right cylinder packing. This remaining machinists' work was completed by the second trick running repair forces, whose regular starting time was 3:45 P. M. on Sunday, October 28. After the locomotive had been fired up and final inspection made, there was certain tightening up work to be done. All of the work was completed at 9:35 P. M., and the locomotive was dispatched on train No. 65 which was due to leave Harmon at 11:02 P. M., that same night. The quick dispatchment after the completion and testing of the locomotive in itself should explain the necessity for this work.

It has been the management's position that the completion of the work on this locomotive was essential to the continuous operation of the railroad. In our conferences with the committees, they admitted that the work was essential to the continuous operation, but contended that it was "dead work" and that all dead work performed by running repair forces on a Sunday or holiday should be paid for at the rate of time and one-half. Rule 6 has been cited as justification for their contentions. We can find nothing in Rule 6 which justifies this stand. The rule definitely provides that work performed on Sundays and certain holidays shall be paid for at the rate of time and one-half, except that employees necessary to the operation of power houses, millwright gangs, heat treating plants, train yards, running repair and inspection forces, who are regularly assigned by bulletin to work on Sundays and holidays, will be com-

pensated on the same basis as on week days. The employes who performed the work were regularly assigned by bulletins to work on Sundays and holidays. The work they performed on this particular Sunday on locomotive 5313 was such as is commonly considered "running repairs". In our conference with the committees, they agreed that it was work that the running repair forces perform every day in the week, but contended that they should not have been required to do it on this particular locomotive on Sunday.

The locomotive unquestionably was needed for service on Sunday night; the work performed was only of a nature similar to that regularly performed by regularly assigned employes, and the claim for the payment of time and one-half to the machinists and helper who spent seventeen man-hours in doing this work is without foundation under the rule, as well as equally without merit from the standpoint of equity.

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.

A portion of Rule 6 reads as follows:

"Sunday and holiday work will be required only when absolutely essential to the continuous operation of the railroad."

A fair application of the rule would be to work no more men on Sundays and holidays than would be worked on these days in a well-managed terminal, if punitive overtime rates were paid instead of straight time.

Disagreements may arise between men and management over the provisions of this rule, each side contending that certain work may or may not be "absolutely essential to the continuous operation of the railroad", but by applying the above principle most of these disputes can be adjusted.

It is not possible for this Division to pass upon details of operation from this distance, nor can it determine whether or not a violation of the rule occurred in the instant case. However, if there be any abuse of the privileges allowed by the overtime exemption on Sundays and holidays, as provided in Rule 6, then it is the obligation and duty of management to do everything possible, either through a re-arrangement of forces or better planning, to curtail the Sunday and holiday work as much as possible consistent with service requirements, in order to carry out the spirit and intent of the provisions of Rule 6, and this Division directs that a joint survey be made to determine if any abuses exist in violation of this rule.

AWARD

Award rendered in accordance with the aforesaid findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated Chicago, Illinois, this 4th day of June, 1936.