

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

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

DISPUTE: CLAIM OF EMPLOYEES.—That the car inspectors at Nottingham Yards, Cleveland, Ohio, that were required to work on Sundays and holidays for the straight time rate while the jobs they worked on were covered only six days per week should be paid time and one-half for all Sundays and holidays that they worked since August 6, 1934, the date the jobs were changed from seven to six days per week.

JOINT STATEMENT OF FACTS.—The inspection forces at Nottingham, Ohio, formerly worked on the basis of a seven day assignment. Effective August 12, 1930, by agreement with committees representing the shop crafts, the men working on these seven day assignments were changed to work six days per week, and furloughed men were assigned to fill the positions on the seventh day. Effective April 1, 1933, at the request of the local committeemen, the working days of the men were changed from six to five days per week and additional furloughed men assigned to work on the days the regular men were off.

Effective August 6, 1934, the management assigned five fewer inspectors and repairers on Mondays and four fewer on Tuesdays than on the other days of the week. This reduction in the number of men worked on these two days of each week resulted in some changes in the scheduled days off for some of the men and the furloughing of two inspectors and repairers. This change was handled by bulletin. Following the change, the number of men working on each day of the week was as follows:

Sunday	44
Monday	40
Tuesday	41
Wednesday	45
Thursday	45
Friday	45
Saturday	45

POSITION OF EMPLOYEES.—The employes' committee contends that the management violated Rule 6 of the agreement when they required five car inspectors to work for straight time on Sundays on jobs that were not covered on Mondays and required four car inspectors to work for straight time on Sundays and holidays on jobs that were not covered on Tuesdays.

The committee further contends when Rule 6 (Decision No. 222) was written by the United States Railroad Labor Board, which provides for time and one-half for Sunday and holiday work, except employes necessary for the continuous operation of the railroad, who are regularly assigned by bulletin to work on Sundays and holidays, would be compensated on the same basis as all week days, that the Labor Board intended that any job covered on Sundays and holidays at the straight time rate would be covered seven days per week, fifty-two weeks per year, or three hundred sixty-five days per year.

When the management and the committee agreed to place the car inspectors on six days per week effective August 12, 1930, and again by agreement the inspectors were put on five days per week, it was done for the purpose of giving work to more men, it was intended that the same number of inspectors would work each day as in the past. Therefore, when on August 6, 1934, the management placed nine of the inspectors' jobs on six instead of seven days each week, which caused a reduction in force of two inspectors, we contend that the men

who were required to cover these nine six-day jobs, on Sundays and holidays, should be paid at the rate of time and one-half for all Sundays and holidays since August 6, 1934.

POSITION OF CARRIER.—Rule 6 of the agreement, which the employees have contended the management violated, is the same as the rule handed down by the former United States Railroad Labor Board in Decision No. 222. It reads as follows:

“RULE 6 (DECISION NO. 222) OVERTIME

“All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

“Work performed on Sundays and the following legal holidays, viz: 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 proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half, except that employees necessary to the operation of power houses, mill wright 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 compensated on the same basis as on week days. Sunday and holiday work will be required only when absolutely essential to the continuous operation of the railroad.”

The employees involved in this claim are a part of the inspection forces at Nottingham, and no question has been raised as to the necessity for these forces working on Sundays and holidays. Assignments were made by bulletin in accordance with the rules, and no question has been raised as to the procedure followed in making the assignment. This procedure resulted in the employees involved having advance information as to the days they would be required to work and gave them ample opportunities to make their plans and exercise their seniority rights for the most desirable assignments which their seniority permitted them to take. Sundays and holidays being regularly assigned working days for inspection forces at Nottingham, there is no justification for the claim for payment at time and one-half for services performed on those days.

It is evident from the claim of the employees that, if the same number of men had been employed on Mondays and Tuesdays as on Sundays, this controversy would not have arisen. The basis of the contentions of the employees in this case, therefore, disregards the possibility that service requirements may be greater on Sundays than on Mondays and Tuesdays. In the Nottingham territory Mondays and Tuesdays are lighter days than Sundays, as demonstrated by the number of men assigned on these days (see “Statement of Facts”), and as further demonstrated by carrier's exhibit No. 1, which shows the number of trains and cars moved out of Nottingham each day of each week from April 29 to November 3, 1934. The fewer number of men assigned on Mondays and Tuesdays is obviously due to the fewer number of cars to be inspected on these days. There is nothing in Rule 6 that requires the management to employ more men on Mondays and Tuesdays than are necessary to protect the service at Nottingham on those days, and the Labor Board placed no such construction upon the rule.

There is no rule or interpretation that justifies the contention of the employees that regularly assigned Sunday and holiday work may not be a part of six-day assignments. The employees contend that the Labor Board intended when promulgating Rule 6 “that any job covered on Sundays and holidays at the straight time rate would be covered 7 days per week, 52 weeks per year, or 365 days per year.”

We are unable to find any support for this contention either in Rule 6 itself or the Interpretations to Decision No. 222. It should be apparent to the Board that Question (d), of Interpretation No. 1 to Decision No. 222, which the employees cite, does not support the contention because it plainly deals with conditions that are entirely different from those involved in this dispute.

The Board will recognize the inconsistency of the claim that a certain nine of the employees regularly assigned to work on Sundays and holidays should be paid punitive rates, while acknowledging the propriety of paying the other employees straight time rates on those days. Forty-four employees worked regularly each Sunday, all performing the same kind of work which is unquestionably necessary for the continuous operation of the railroad, but the employees

hold that nine of these forty-four are entitled, under Rule 6, to time and one-half for their Sunday service. They further hold that these same nine men are entitled to time and one-half for each of the seven holidays that they may have worked in their respective assignments. Taking the next ensuing holiday, Decoration Day, which falls on a Saturday, as an illustration, forty-five men, the maximum employed on any day of the week, will work their regular assignment on this holiday, but the employees hold that nine of these forty-five should be paid time and one-half under their interpretation of Rule 6.

There is nothing in Rule 6 which supports the claim of the employees for punitive pay covering the circumstances involved in this case. On the contrary, it will be plain to the Board that the rule definitely provides for payment of pro rata rates for Sunday and holiday service if employees are regularly assigned by bulletin to perform work on those days which is essential to continuous operation, which is the case at Nottingham, and no question is involved as to the necessity for the work on Sundays and holidays at Nottingham or the assigning of these employees by bulletin. Furthermore, there is nothing in the rule which excludes regularly assigned Sunday and holiday work that may be a part of six day positions from the provision in the rule under which pro rata payments are proper, provided such Sunday and holiday work is necessary to continuous operation. To uphold the contentions of the employees in this case would be contrary to the plain intent of the rule and to the manner in which it has been understood to apply ever since it has been in effect on this railroad. We urge, therefore, that the Board decline the claim of the employees in this case.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 force was working five (5) days per week protecting the service seven (7) days per week, which arrangement was made upon request of the employees for the purpose of spreading employment.

There appears to have been no provision in this arrangement as to the method to be followed in determining the number of employees to be worked on the various days of the week. The men assigned to Sunday and holiday work were assigned by bulletin in accordance with the overtime rule.

Based on the evidence submitted there does not appear to be justification for payment of overtime rates.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1936.