

Award No. 365
Docket No. 306
2-NYNH&H-CM-'39

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYES: Request that George Plant, car inspector in the passenger yard at Providence, R. I., be compensated for the difference between straight time and time and one-half for service performed on Labor Day, Monday, September 6, 1937. Claim made under Rule 3 of the agreement.

JOINT STATEMENT OF FACTS: Mr. Plant was not ordinarily required to work on Mondays. By reason of the additional inspection requirements in the passenger yard, due to the Labor Day holiday travel, notice was given him on Friday preceding the holiday that he would cover an assignment, working the regular hours on Labor Day, Monday, September 6, 1937, and for which he received the straight time rate.

POSITION OF EMPLOYES: At Union Station, Providence, Rhode Island, the regular assigned force on the 11:00 P. M. to 7:00 A. M. shift is two car inspectors and one car inspector leader daily. On September 6, 1937, Labor Day, Monday, same being a recognized holiday, the force on this shift was increased by one car inspector, to meet the holiday requirements. There being no furloughed or extra men at this point, George J. Plant, who is scheduled to be off every Monday, was required to work. The payment of straight time is a violation of Rule 3, paragraph 3, which reads:

"Regular men who are not assigned to work on Sundays, Holidays, or other designated relief days, and who are called in emergency to work on such days, and not in place of regular men who are scheduled to work and who do not report for one reason or another will be paid at the rate of time and one-half for such work with a minimum allowance of two hours and forty minutes."

We further contend that Rule 9 of the current agreement, reading:

"Distribution of Overtime and Sunday and Holiday Work.

When it becomes necessary for employes to work overtime they shall not be laid off during regular working hours to equalize the time.

To enable division of regular Sunday and holiday work between the men of the various crafts at each point, notice should be posted not later than Friday of each week showing the names of the men scheduled to work the following Sunday, similar notice to be posted at least two days before the regular holidays as specified in Rule 3.

Summarizing:

1. Mr. Plant was assigned to work on Monday, September 6, 1937.
2. He was a necessary inspection force employe.
3. He was not called in emergency.

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.

Rule 9 of the agreement provides:

* * * "To enable division of regular Sunday and Holiday work between the men of the various crafts at each point, notice should be posted not later than Friday of each week showing the names of the men scheduled to work the following Sunday, similar notice to be posted at least two days before the regular holidays as specified in Rule 3.

Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally." * * *

Rule 3 provides:

"All time worked in excess of eight hours and continuous with regular bulletined hours, exclusive of the time spent in traveling or waiting, will be paid for at the rate of time and one-half on the minute basis except as may be otherwise provided hereinafter." * * *

Rule 3 further states:

"Work performed on Sundays and the following legal holidays . . . * * * shall be paid for at the rate of time and one-half, except that employes necessary to the operation of power houses, millwright gangs, heat treating plants, train yards, running-repair and inspection forces who are assigned to work on Sundays and holidays, will be compensated on the same basis as on week days." * * *

The work done herein came squarely within the second paragraph of Rule 3, namely, the provision applying to "running repair and inspection forces." The forces here involved were inspection forces and were assigned to work on Labor Day, a holiday. The assignment was made in compliance with Rule 9.

The first paragraph of Rule 3 does not alter the effect of the second paragraph of Rule 3 and of the provisions of Rule 9.

There is no violation of the agreement in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1939.