

**Award No. 366**  
**Docket No. 326**  
**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 three car inspectors, namely, W. Hile, H. Lyons and A. Cacase, who worked at the Cedar Hill L. C. L. Transfer on Sunday, May 9, 1937, be paid at the rate of time and one-half. Claim is made under the third paragraph of Rule 3.

**JOINT STATEMENT OF FACTS:** These men ordinarily work from Monday to Saturday, inclusive. On Friday, May 7, bulletin notice was posted assigning them to work on Sunday, May 9. The work which they performed was running repair and inspection work. They were paid for such work on the same basis as on other days of the week, i.e., straight time.

**POSITION OF EMPLOYES:** On May 9, 1937, Sunday, three car inspectors were required to work at the Cedar Hill L. C. L. Transfer, New Haven, Connecticut. The car inspection force at the L. C. L. Transfer is three car inspectors, that work from Monday to Saturday, inclusive. The car inspectors are not required to work on Sundays because they do not load freight on Sunday; therefore, Sunday is their regular day of relief. May 9, they were not called to work in place of another man who was scheduled to work and who did not report for one reason or another, but as additional car inspectors to the regular assigned Sunday force. Although these men were notified, as per Rule 9, the type of work that they performed comes within the category of emergency work. These men did not have any relief man. The regular assigned inspection force at the New Haven Terminal on Sunday is twenty-seven (27), and on the Sunday in question there were 30 car inspectors used. 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 contend that this job being a six-day job and there being no regular men scheduled to work at the L. C. L. Transfer on Sundays, and Sunday being their designated day of relief, they should be paid the time and one-half rate for work performed.

stated were still open on their books. He did not understand the third paragraph of Rule 6 and its relation to the second paragraph of Rule 11. Explanation was made as to just what the arrangement was and with which he expressed himself as satisfied."

The Board members will recall that at hearing before the Board on November 18, 1938, in the case covered by Docket 306 of the Second Division, General Chairman Sheehan agreed, in response to inquiry made to him, that work covered by the exceptions referred to in the second paragraph of Rule 3, when performed on Sundays, would be paid for at straight time rate, and that also there had been no question concerning the propriety of such payment providing prior notice had been given as required under the second paragraph of Rule 9. Illustration was made as may be recalled, of a theoretical situation at an engine house where 25 mechanics were employed, engaged in running repair work and the number of which varied from Sunday to Sunday by reason of the service requirements. On one Sunday it was anticipated that five men would be needed and the names of five men were bulletined under Rule 9 on the preceding Friday; the following Sunday it was anticipated that seven men would be needed and the names of seven men were accordingly posted on the next preceding Friday; the following Sunday the need for only four was anticipated and the names of four more men would be posted on the preceding Friday and so on. It was definitely agreed that these men, or any others who might be called to take their places, would be entitled to pay only at the straight-time rate, but that if after Friday the need for additional men developed and not to take the place of those whose names had been posted on Friday, the additional men would be regarded as being called to work in emergency and, therefore, entitled to pay at time and one-half.

It was also agreed, as in this case, that if a regular man had a relief day assignment with a regular relief substitute provided and for some reason the regular relief substitute did not work, the regular man who would otherwise have been off on such day, could be required to work and would be entitled to pay only at straight time.

In conclusion we have shown:

- 1st—That these men were assigned to work on Sunday, May 9, 1937.
- 2nd—That they were necessary inspection force employees.
- 3rd—That they were not called in emergency but were assigned to work in the manner specified in the second paragraph of Rule 9.
- 4th—That the present practice has been in effect since April 9, 1923.
- 5th—That the Mechanical Department System Board of Adjustment created under the terms of the existing laws and revised following the passage of the amendments to the Railway Labor Act in June, 1934, set their approval upon the arrangement.
- 6th—That the Brotherhood Railway Carmen of America through the agreement of April 9, 1937, continued the arrangement.

The request of the employees is, in effect, for a change in the rules and their understood and agreed-upon application as adopted by agreement effective April 9, 1937, and which agreed-upon rules and application were recognized and accepted as continuing the identical interpretations and practices which had been in force for many years previous.

**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 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 employees 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 Sunday. 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,