

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 25, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS
AND AFFILIATED LINES**

DISPUTE: CLAIM OF EMPLOYEES: That regularly assigned 5-day employees filling the positions of regularly assigned 7-day employees, who are absent from duty, be compensated at the established overtime rate for the 6th and 7th day.

JOINT STATEMENT OF FACTS: H. G. Fierce, a pipefitter, regularly assigned by bulletin to 7-day service on the first shift was granted leave of absence October 1 and 2, 1938.

O. C. Mundelius, pipefitter, regularly assigned by bulletin to 5-day service on the first shift, was used to fill the vacancy on the 7-day assignment created by H. G. Fierce's leave of absence October 1 and 2, 1938, because there were no extra or furloughed men available. Mundelius claimed time and one-half for this service, but his claim was denied and he was compensated at the straight-time rate.

POSITION OF EMPLOYEES: The carrier violated the provisions of Rule 6 of the current agreement, which reads:

"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 house, 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 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. (Rule not acceptable to employees as written, but will remain in force until changed by regular negotiations.)"

in refusing to compensate O. C. Mundelius at the rate of time and one-half for services performed Saturday, October 1, and Sunday, October 2, 1938.

It is clear that the job and not the incumbent is the factor involved in determining the method of payment. That being so, it is immaterial what individual performs the work on any given day, week days, Sundays or holidays. The individual cannot change the nature of the job or the conditions surrounding it, all of which are fully covered by bulletin when the job is instituted. The application of these facts to the particular claim leads to the inevitable conclusion that it is immaterial whether Fierce or Mundelius worked the job on the dates in question or any other. A switch of individuals could not change the nature of the job. That could be accomplished only by bulletin.

Having determined the nature of the job under the rule, which definitely establishes the basis of pay for Sunday and holiday work, the only question remaining is whether or not Mundelius was properly used to fill the vacancy brought about by the regular incumbent laying off. Under ordinary conditions temporary vacancies are filled by extra men who are allowed the same pay that the regular men would have received. There is no dispute between us as to paying extra men straight time for Sunday and holiday work when relieving regular men holding such assignments.

When extra men are not available to fill temporary vacancies, as was the case when Mundelius was called upon to relieve Fierce, another rule enters the picture. It is No. 8 reading:

“Employees regularly assigned to work on Sundays or holidays, or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request. Those who are called will be advised as soon as possible after vacancies become known.

In the event of a temporary vacancy on a Sunday or holiday assignment, the junior qualified employee may be assigned. Senior qualified men, if available, will be given preference.”

That rule was complied with as Mundelius was the junior qualified employee in that seniority district. Note in this connection that this rule does not change the nature of any given job or the method of pay. It simply defines who may be assigned to properly fill the job when extra men are not available and senior men do not care for the job.

The whole purpose of the rule is to enable the railroads to perform work necessary to continuous operation at straight-time rates regardless of the intervention of Sundays and holidays. It is performed at straight-time rates when regular incumbents of the advertised jobs are on duty, and it stands to reason that the nature of the work is governing and that the railroad is entitled to have it performed at straight-time rates regardless of who does it in the absence of the regular man, whether such absence is brought about by sickness, authorized leave, or otherwise. An extra or furloughed employee called to protect such a vacancy would be compensated at straight-time rates and it is not contemplated that the railroad will be penalized if a man is sick or on leave simply because there are no extra or furloughed men available. As a matter of fact, Rule 8 was included in the agreement for the express purpose of taking care of such an emergency by providing that the junior qualified employee would be assigned if the senior men did not want the work. A junior employee assigned under such circumstances loses his identity in his regular capacity and must of necessity assume the obligations, working conditions and rate of pay of the job which he is called upon to fill. The rules do not contemplate penalizing the railroad because a man gets sick or is granted leave of absence.

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 notice of hearing thereon.

There is in evidence a letter dated October 20, 1924, wherein the carrier agreed to apply Interpretation No. 1 to Decision No. 222, under circumstances similar to the claim in this dispute.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of October, 1939.