

Award No. 675
Docket No. 665
2-D&RGW-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO 10, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That Machinists Joe Cour, Bailey Arant and T. C. Chapman and Machinist Helpers Jack Schmidt, Bert Scougale and W. L. Martin be compensated for the difference between straight time and time and one-half for service performed on Thanksgiving Day, November 21, 1940.

EMPLOYES' STATEMENT OF FACTS: On November 18, 1940, Machinists Joe Cour and T. C. Chapman were notified by the office of the master mechanic to report for duty on the 3:30 P.M. to 11:30 P.M. shift and at the same time Bulletin 372 was posted calling for one machinist, seven days per week assignment effective at 11:30 P.M., November 22, 1940, and on November 19, 1940, Bulletin 381 was posted calling for one additional machinist on the 3:30 P.M. to 11:30 P.M. shift seven day assignment effective prior to 7:30 A.M. November 23, 1940. Machinist Bailey Arant was notified to report on the 11:30 P.M. to 7:30 A.M. shift and Bulletin 374 was posted calling for one machinist seven days per week assignment effective prior to 7:30 A.M. November 23, 1940. Machinist Helpers W. L. Martin and Bert Scougale were notified to report on the 3:30 to 11:30 P.M. shift and Bulletins 371 and 373 were posted on November 18, 1940, calling for one machinist helper each seven day assignment effective at 11:30 P.M. to 7:30 A.M. shift and Bulletin 375 was posted calling for one machinist helper seven day assignment effective prior to 7:30 A.M. November 23, 1940.

POSITION OF EMPLOYES: In addition to the regular assigned forces at Grand Junction, Colorado, three machinists and three machinist helpers were advised to report for duty on the second and third shifts to assist in the handling of the increase in the volume of work. The employees contend that they should have been compensated at the rate of time and one-half for having been required to perform service on Thanksgiving Day on November 21, 1940, inasmuch as these employees were not regularly assigned to perform work on Sundays and legal holidays. As a matter of record, all regular seven day assigned employees reported for service on Thanksgiving Day, November 21, 1940; therefore, these additional employees were not used to fill the vacancies of men laying off.

but is in accord with the provisions of the memorandum of agreement dated May 9, 1940, covering the intent and application of Rule 6—the overtime, Sunday, and holiday work rule of the agreement. The memorandum of agreement dated May 9, 1940, is a part of and is included in the current shop crafts' agreement, being shown on page 48 thereof.

In submitting this claim to your Board, the employees do not indicate or specify what rule or rules of the agreement were violated as result of the carrier compensating the employees involved at straight time rates for the work they performed on Thanksgiving Day, 1940, and in connection therewith the carrier asserts there was no rule or settlement violated.

During conference in connection with this case the employees stated in view of Rule 15, (b) of the agreement reading:

“(b) All new positions and vacancies shall be bulletined for five (5) days before being permanently filled.”

that it was their position these employees were not regularly assigned by bulletin to work on Sundays and holidays because these bulletins did not expire until the close of their shift November 22, 1940, and that Rule 6 (b) provides employees not regularly assigned by bulletin to work Sundays and holidays shall be paid time and one-half.

The carrier's position is:

Rule 15 (b) has no application to the instant claim. There is nothing in this rule which states that employees called back to work in their turn in an increase of force covering regular seven day assigned jobs under bulletin are not filling regular seven day assigned jobs. The rule provides a means for senior employees to obtain the better jobs available. The six men involved in this claim were, as previously stated, the available men next entitled to a regular job and when they reported for service under the provisions of Bulletins 371 to 375 inclusive and Bulletin 381 they occupied regular assigned seven day jobs. The intent and past application of Rule 15 (b) is to give employees an opportunity, for five days, to make request for any new position or vacancy which might be bulletined. It is only through bulletins that an employee has an opportunity to seek and secure the position or working shift of his choice.

With regard to Rule 6 (b) the carrier holds the employees involved knew by the very language of the bulletin covering their return to work that they were on a seven day assignment and they also knew—as result of their seniority—they being the senior furloughed employees that they were permanently assigned.

The carrier contends that the positions occupied by these employees were seven day permanent positions and that these men were regularly assigned seven day employees on a regular seven day assignment, and are, therefore, only entitled in accordance with the provisions of Rule 6 (b) and the memorandum of agreement, dated May 9, 1940, covering the intent and application of Rule 6 (page 48 of the agreement) to pro rata rates for the service they performed Thanksgiving Day, November 21, 1940.

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 evidence of record discloses that the claimants held "seven days per week assignments" when they performed service on Thanksgiving Day, November 21, 1940, and that they were compensated for this service in conformity with the rules of the agreement.

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 December, 1941.