

Award No. 872

Docket No. 785

2-T&P-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee H. B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That the carrier is violating Rule 2 (b) by working carmen and helpers on repair tracks Sundays and holidays for straight time rate.

(b) That all carmen and helpers assigned to repair cars on repair track Sundays and holidays be paid the rate and one-half within the meaning of Rule 2 (b) from February 2, 1942, until settlement is reached.

EMPLOYES' STATEMENT OF FACTS: That we served notice on Assistant Vice President James, under date of February 2, 1942, which reads:

In reply to your letter of November 29, in regards to violation of rule 1 (d) twenty minutes for lunch.

We are not in accord with your decision and in addition to our claim for 20 minute lunch period we are claiming time and one-half for all Carmen assigned on Sundays, and holidays to repair cars on repair tracks within the meaning of Rule 2 (b) this effective on and after date of this letter.

Mr. James, ignored this letter and the case was started in Texarkana, where we had twelve carmen and six carmen helpers who are regularly assigned to work Sundays and holidays on repair track. The eighteen employes perform the same class of repair work on Sundays and holidays as on week days.

POSITION OF EMPLOYES: That all repairs on cars made on Sundays and holidays for the purpose of paying straight time should be performed in train yards under Rule 2 (b) and not on rip track, as cars sent to rip tracks do not interfere with the trains in which they arrived continuing to points of destination, Rule 2 (b) reads:

Work performed on Sunday and the following legal holidays, namely, 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 employes necessary to operation of houses, mill-wright gangs, heat-treating, plants, train yard, running-repair and inspection forces, who are

repair work could work seven days per week, etc., at straight time rates. If this were not so, it would not be possible to work employes in our round-houses on running repair work on locomotives on seven day basis without paying time and one-half for this service. Such is not the case. All shop crafts with exception of the carmen thoroughly understand that if an employe is assigned by bulletin to work seven days per week and his services are essential to the continuous operation of the railway he will not receive time and one-half for Sunday and holiday service. There being no difference in this and the carmen's craft, the men assigned by bulletin to work seven days per week on the repair track at the various points are essential to the continuous operation of this railway.

If this were not permitted, the carrier could not carry out its part of the great defense program in moving cars to and from destination with the least possible delay. If it were not possible to work these employes seven days per week at straight time rate, it would mean that the cars had ordered for brake beams, journal box packing, etc., on Sundays would remain in the yards until Monday and thus delay vital materials for over twenty-four hours. To this we feel sure your Board will agree the rules of the agreement with System Federation No. 121 do not provide, nor do they contemplate, or have ever been applied, for this to be done. On the other hand, the above rule does plainly state that the carrier will be permitted to work employes on repair track that are essential to continuous operation of the railway on seven day basis without paying time and one-half for Sunday and holiday work.

The employes thoroughly understand the men are assigned by bulletin to work seven days per week on the repair track which is evidenced by General Chairman of Carmen Crumpton's letter of March 12, 1942, to Mechanical Superintendent Prendergast, reading in part as follows and submitted as Exhibit A:

"We are claiming time and one-half for all carmen assigned on Sundays, and holidays to repair cars on the rip track, within the meaning of Rule 2 (b)." (Underscoring ours.)

The carrier has proven:

1. The employes working seven days per week on repair tracks were all assigned by bulletin to work on Sundays and/or holidays.
2. The employes working seven days per week on repair track work on cars essential to continuous operation of the railway.
3. The employes working seven days per week on repair tracks are only entitled to straight time rates for such work.
4. The employes working seven days per week on repair tracks are working only on running repair cars which is in keeping with Rule 2 (b) and essential to continuous operation.

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.

The exception with respect to the payment of overtime rates for Sunday and holiday work contained in Rule 2 (b) is expressly applicable not only

to "train yards" but to "running repair and inspection forces" without regard to their location; and no distinction is made between the locomotive department and the car department. Award 824.

If carmen and helpers assigned to repair tracks on a seven day basis perform any work on Sunday except "running repair" work "essential to the continuous operation of the railroad" they should be paid on an overtime basis for such work, but "running repair" work "essential to the continuous operation of the railroad" performed on Sunday by these seven day assigned men is to be compensated, under the rule, "on the same basis as on week days."

AWARD

Claim (a) denied.

Claim (b) sustained to the extent disclosed in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1942.