

Award No. 880

Docket No. 788

2-C&WC-FT-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 60, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

**CHARLESTON & WESTERN CAROLINA RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement and Rule 6 thereof, except employees properly assigned to work on Sundays and holidays (seven days a week), all other employees assigned or required to work on Saturdays since July 16, 1940, be paid for such services at the rate of time and one-half.

EMPLOYEES' STATEMENT OF FACTS: The carrier posted the following bulletin:

Bulletin

All Shop Employees:

October 21, 1939

Effective at once and until further advised, the shop will work six (6) days a week, using a full force.

The present Sunday and holiday assignment will remain in effect.

(Signed) W. F. Kuhlke
Supt. Motive Power

Effective July 16, 1940, the shops were put on five days a week as per the following bulletin:

BULLETIN

Augusta, Ga., July 12, 1940

Shop Employees:

Effective Tuesday July 16 and continuing until further advised, we will operate the shop, using a full force, five days, or forty hours, per week, under provisions in Rule 22.

(Signed) W. F. Kuhlke
Supt. Motive Power

Prior and subsequent to July 16, 1940, the force assigned to work Sundays and holidays by departments and classifications are shown by bulletin of August 24, 1939.

BULLETIN

Shop Employees in
Locomotive Department:

Effective September 1st we will operate the shop, using a full force on a forty (40) hour a week basis, working Mondays, Tuesdays,

Mr. A. F. Milton, Roundhouse Foreman, Exhibit C
Mr. P. J. Park, Boilermaker Foreman, Exhibit D
Mr. R. G. Smith, Blacksmith Foreman, Exhibit E
Mr. O. B. Inman, Machine Shop Foreman, Exhibit F
Mr. V. J. Lamb, General Foreman Car Repairs, Exhibit G.

Conditions such as those contained in this case were undoubtedly considered by the former United States Railroad Labor Board when Rule 6 was adopted, for in Decision 222 the Board gave the following explanation of the rule's intent:

"The policy of paying time and one-half for work performed on Sundays and holidays is also approved in Rule 6, but an important exception is provided. Certain kinds of work, which are unavoidably and regularly performed on Sundays and holidays and which are absolutely essential to the continuous operation of the railroad to meet the requirements of the public, are not treated as overtime work. The carrier has no choice as to the performance of this work and does not arbitrarily require it. It is not just to penalize the carrier for that which it cannot escape. Manufacturing plants can, as a rule, control or eliminate Sunday and holiday work; therefore a comparison of such plants with a railroad is unfair except in so far as the 'back shop' is concerned, and the method of paying for overtime in the back shop has not been disturbed by these rules."

In Award 525, Docket 459 of this Board, the Board found as follows:

"Findings:

Rule 6 of the agreement provides that: * * * Sunday and holiday work will be required only when absolutely essential to the continuous operation of the railroad."

A fair application of Rule 6, would be to work no more men on Sundays and holidays than would be necessary.

It has been shown that carrier did recognize Rule 6 of the agreement and did not work any more men on Sundays and holidays than was necessary.

It has been shown that carrier did post bulletins and copies were furnished the committees of the change in assignment of hours and there has been no dispute in the assignment of employees, and the employees were not worked beyond the assignment as covered by bulletin.

Therefore, the carrier contends there has been no violation of the rules of the agreement and respectfully requests the National Railroad Adjustment Board to deny this claim.

Carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer.

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.

While the bulletin dated July 12, 1940, states the shop will be operated five days or 40 hours per week, effective July 16th, the evidence of record, as well as the testimony introduced at the hearing of this case discloses that the facility is in fact an enginehouse (roundhouse), and in a certain portion of which heavy or classified repairs are made, the forces employed in both enginehouse and what is recognized as the shop being used in either place according to the requirements of the service.

When necessary to increase or decrease the assignment of six day running repair forces, it should be handled as prescribed for in the agreement.

When shop or heavy repair forces are worked forty hours per week, and enginehouse forces or running repair forces are worked forty-eight and fifty-six hours per week, the agreement contemplates that these shop or heavy repair forces and the running repair forces are separate and distinct units.

AWARD

The agreement shall be applied in accordance with the above findings.

Claim for compensation is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1942.