

Award No. 948
Docket No. 796
2-D&RGW-CM-'43

**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 EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

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

(Wilson McCarthy and Henry Swan, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier violated the letter and spirit of the controlling agreement and Rules 6, 15, 34 and 102 thereof by:

(a) The assignment of Carman Apprentice T. R. Richards to work Sundays and holidays.

(b) The payment of Carman Apprentice T. R. Richards straight time for Sundays and holidays.

2. That for said violations the carrier be ordered to:

(a) Pay Carman Apprentice T. R. Richards time and one-half for all Sunday and holiday work performed on and since February 22, 1942.

(b) Cease and desist from the assignment of carmen apprentices to Sunday and holiday service.

EMPLOYEES' STATEMENT OF FACTS: The carrier employs apprentices in the car department at Grand Junction, Colorado, six days per week, excluding Sundays and holidays. On or about February 17, 1942, Carman Apprentice T. R. Richards was assigned to service time on the welding job, at which time he had served on his apprenticeship only approximately eighteen months.

Carman Apprentice T. R. Richards was instructed to work each Sunday and holiday, effective on and after Sunday, February 22, 1942. He worked on the welding job in the locomotive department on February 22 and 23. There were two carmen welders available. This was the first time that any carmen apprentices had been assigned to work on Sundays and holidays and for this service the claimant has been paid only the straight time rate.

POSITION OF EMPLOYEES: Paragraph (b) of Rule 6 of the controlling agreement reads as follows:

Work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day,

2. That the present situation with respect to the lack of mechanics together with the large increase in engines handled—the number handled during the month involved in this dispute being 57% greater than the same month a year ago—created an emergency which made necessary the assignment of apprentices on Sundays and holidays in accordance with the provisions of Paragraph (B) of Rule 6 which reads:

Work performed on Sundays 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 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 essential to the continuous operation of the railroad.

and warrants denial of the claim.

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 evidence of record discloses a violation of Rule 34 (r) of the prevailing agreement in the work assignment of Carman Apprentice T. R. Richards, and it supports the conclusion that under Rule 6 (b) of that agreement the claimant is entitled to time and one-half for all Sunday and holiday work in fact performed by him on and after February 22, 1942. The work arrangement and basis of payment followed in this proceeding can properly be employed only by mutual assent of the parties, as an express modification of the prevailing agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of October, 1943.