

Award No. 950
Docket No. 843
2-D&RGW-MA-'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. (MACHINISTS)

THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

DISPUTE: CLAIM OF EMPLOYEES:

1. That on and since December 24, 1941, the carrier has arbitrarily violated the controlling agreement and Rule 34 thereof by:

(a) The abolition of the six-day work week of machinist apprentices which did not include either holidays or Sundays.

(b) The assignment of machinist apprentices to work seven days a week, three hundred and sixty-five (365) days per year.

(c) The payment of straight time to these machinist apprentices for service performed in excess of their basic six-day work week.

2. That in consideration of the aforesaid violations, the carrier be ordered to:

(a) Re-establish the basic six-day week for these machinist apprentices.

(b) Compensate these machinist apprentices at time and one-half rate for having worked on the seventh day of each week and for each holiday worked since December 24, 1941.

EMPLOYEES' STATEMENT OF FACTS: At Grand Junction, Colorado, the carrier maintains a back shop and a roundhouse where machinist apprentices are employed for the purpose of learning the machinists' trade.

Prior to December 25, 1941, these apprentices worked six days a week exclusive of holidays and Sundays.

Effective December 25, 1941, these apprentices were arbitrarily assigned to work seven days a week.

Month	1942	1941	1940	Percentage Increase	
				1942 over 1941	1942 over 1940
January	1117	730	719	53	55
February	1026	652	612	57	68
March	1013	791	669	28	51
April	1066	750	685	42	56
May	1158	844	735	37	58
June	1111	783	619	42	79
July	1192	853	759	40	57
August	1313	1101	951	19	38
September	1442	1183	966	22	49
October	1443	1266	995	14	45

In regard to Rule 34, the carrier knows of no part of this rule that was violated in working the apprentices in the enginehouse at Grand Junction seven days per week. Paragraph (r) of this rule reads:

Apprentices shall not be assigned to work on night shifts, and shall not be allowed to work overtime, except in an emergency, or to complete work on which engaged at close of regular daily assignment, until the last two hundred ninety (290) days of their apprenticeships.

and it is the carrier's position that the present situation not only constitutes an emergency under the provisions of this paragraph of the rule, but that these employes were used on work absolutely essential to the continuous operation of the railroad, and consequently work performed comes within the provisions of Rule 6 (b) quoted below.

The carrier contends in this case:

1. That Grand Junction is strictly a runner repair point and the work performed by the apprentices on Sundays and holidays is work that is essential to the continuous operation of the railroad.

2. That the present situation with respect to the shortage of mechanical department employes, together with the large increase in engines handled—the number handled during the ten-month period January to October 1942 inclusive being 33 per cent greater than the same period in 1941 and 54 per cent greater than the same ten months in 1940—created an emergency which made necessary the assignment of apprentices on Sundays and holidays and 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 employes 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 the machinist apprentices, and it supports the conclusion that under Rule 6 (b) of that agreement the machinist apprentices are entitled to time and one-half for all Sunday and holiday work in fact performed by them on and after December 25, 1941. 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.