

Award No. 1006

Docket No. 922

2-Erie-FT-'44

**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. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement, the carrier be ordered to pay Thomas James, carman; John Maruszerswski, carman; Patsey Quantiero, carman helper; Henry Lockwood, sheet metal worker; and Benard Felcareli, sheet metal worker, each time and one-half, or four (4) additional hours, for services rendered by them on Sunday, September 20, 1942.

EMPLOYEES' STATEMENT OF FACTS: At the Jersey Avenue car shop, Jersey City, New Jersey, the carrier placed car 6721 in the shop for repairs on Tuesday, September 15, 1942.

Thomas James, carman; John Maruszerswski, carman Patsey Quantiero, carman helper; Henry Lockwood, sheet metal worker and Benard Felcareli, sheet metal worker, were properly assigned to work eight (8) hours at straight-time rates on Sunday, September 20, 1942, on running repairs and in train yards.

The carrier, however, assigned these employes to work their regular eight (8) hour shift on milk car 6721 and for which service they were paid straight time rates. The carrier has declined to pay them at the rate of time and one-half for this service.

The agreement controlling is dated effective: rates of pay, July 1, 1942; and rules, August 1, 1942.

POSITION OF EMPLOYEES: That Rule 4 (b) of the agreement between the Erie Railroad Company and Erie System Federation No. 100, effective July 1, 1942, as to rates of pay, and August 1, 1942, as to rules, was violated when Thomas James, carman; John Maruszerswski, carman; Patsey Quantiero, carman helper; Henry Lockwood, sheet metal worker and Benard Felcareli, sheet metal worker, were compensated at straight-time rates for work performed on milk car 6721 on Sunday, September 20, 1942, for the following reasons:

Rule 4 (b) reads as follows:

Service 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 that when any of the above holidays fall on Sunday, the day observed

'Dead work means all work on an engine which cannot be handled within twenty-four (24) hours by the regularly assigned running repair forces at point where question arises.'

As stated to you at these conferences, we could not agree to such an interpretation of 'dead work'; and as further agreed, we will continue the present practice under the '72-hour rule' until such time as a new understanding has been negotiated under your proposal.

Yours very truly,

(signed) R. V. Blocker

Supt. of Motive Power."

Both the proposed dead work and the 72-hour rules dealt with engines and had no relation to cars. Much of the running repairs on passenger coaches at Jersey City is accomplished on Sundays because they are not available for such repairs on other days in the week. A milk car generally moves in a passenger train and is considered a passenger car in the records and is equipped accordingly.

We do not agree with the so-called memorandum presented by the employes concerning 72-hour work which was based on a pencil record maintained by a committeeman and was not based on the instructions released by Mr. Baldwin after the conference, which are hereinabove quoted, and further, there is no record of the 72-hour rule ever having been applied to cars, and no previous general chairmen have made such a request as is made here.

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 claimants in this proceeding were properly assigned to work at straight-time rates on Sunday, September 20, 1942, in conformity with the requirements of Rule 4 (b) of the controlling agreement, and the work they performed that day on milk car 6721 was running-repair work, within the meaning of this rule. The sole question at issue is whether this work was "absolutely essential to the continuous operation of the railroad," which is also specified in the rule as conditioning the applicability of the straight-time rates.

The claim for the time-and-one-half rates is based upon the fact that milk car 6721 was marked for repairs on Tuesday, September 15, and the repairs were not actually made until Sunday, September 20. Whatever the reason for this lapse of time (before the car was transferred to the repair track and the work involved was performed), the delay can prove at most only that work on the car was not essential before Sunday. The claim is for the Sunday work, and the question is whether the work was essential at the time it was performed. The evidence shows that this car was placed in service on Sunday,

September 20, 1942, immediately after the necessary repairs had been completed. This fact supports the conclusion that the work was essential, within the meaning of Rule 4 (b) 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 22nd day of March, 1944.