

Award No. 1143

Docket No. 1074

2-KCT-FO-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement and Rule 9 thereof, the carrier be ordered to additionally compensate, at rate of time and one-half, the following employees for service which they performed on the dates opposite their respective names:

1. Virgil Brinkley—8 hours each on December 6, 13 and 20, 1943
2. Joe Booker—8 hours each on December 6, 13 and 20, 1943
3. P. Wright—8 hours each on December 6 and 13, 1943
4. C. A. Combs—8 hours each on December 7, 14 and 21, 1943
5. G. R. Cotton—8 hours each on December 8, 15 and 22, 1943
6. John Lee—8 hours each on December 8, 15 and 22, 1943
7. George Hatton—8 hours each on December 9 and 16, 1943
8. Samuel Brunston—8 hours on December 10, 1943
9. A. Barnett—8 hours on December 10, 1943
10. Rice Halbert—8 hours each on December 11 and 18, 1943
11. G. S. McGee—8 hours each on December 11 and 18, 1943
12. S. Thornton—8 hours each on December 11 and 18, 1943

EMPLOYEES' STATEMENT OF FACTS: These claimant employees are regularly employed by the Kansas City Terminal Railway Company as laborers in the car department and are assigned a regular day off each week as indicated below:

1—Virgil Brinkley	Monday
2—Joe Booker	Monday
3—P. Wright	Monday
4—C. A. Combs.....	Tuesday
5—G. R. Cotton.....	Wednesday
6—John Lee	Wednesday
7—George Hatton	Thursday
8—Samuel Brunston	Friday
9—A. Barnett	Friday
10—Rice Halbert	Saturday
11—G. S. McGee	Saturday
12—S. Thornton	Saturday

truth, it would likely rule in favor of the employees again in this case. Claimant Wright was absent account of illness December 20 to January 2, inclusive, and consequently did not work on December 20 and December 27, 1943. Claimant No. 4 previously had Tuesday as his day off; however, he worked every Tuesday during the month of December, 1943, although claim made for him is for December 7, 14 and 21, 1943, only. Claimant No. 5 previously had Wednesday as his day off and in this Docket, claim has been made for him for December 8, 15 and 22 only; however, he was excused and did not work on December 22 (claim is improper for that date, even from the viewpoint of the employees' position), and he did work on December 1 and 29, 1943, dates for which claim was not made. Claimant No. 6 also previously had Wednesday as his day off; however, during the month of December, 1943, he worked every Wednesday. In this case claim is made for penalty rate for December 8, 15 and 22 only. Claimant No. 7 only shows a claim for Dec. 9 and 16, 1943, which were Thursdays; however, the records show that he worked every Thursday in the month of December, although claim is made for December 9 and 16 only. Claimants Nos. 8 and 9 had previously been assigned Fridays off. Claimant No. 8 worked on December 3 and 10, but was excused to be absent on December 17, 24 and 31. Claimant No. 9 worked every Friday during the month of December, 1943, although claim is made for December 10 only. Claimants Nos. 10, 11 and 12 had previously been assigned Saturdays off and the only Saturday they didn't work during December, 1943, was December 25, which was Christmas Day, and one of the three claimants, No. 10 even worked on that day, although claims were made for only two of the four Saturdays.

POSITION OF CARRIER: Local Chairman Holder's letter of December 9, 1943, confirms the fact that a meeting was held with respect to the car department supervisor's notification of about December 1, 1943, that car department laborers would work seven days per week and be paid pro rata therefor, as Holder clearly refers to "straight time done by the laborers seven days per week," and states his incorrect belief that Rule No. 5 (the Sunday and holiday Rule) "gives every man in its category the rate of time and one-half for work done the seventh day." Rule 5 only refers to work done on Sundays and holidays. The carrier's Statement of Facts reveals facts taken from its payroll records that the claimants herein were, in fact, working seventh days regularly, because they were assigned to work seven days per week and therefore the claim of the employees should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

There was an arrangement in effect for several years that laborers in the car department had one assigned day off each week. When an employee was required to work on his day off he was paid at the rate of time and one-half up to or about the first part of December, 1943.

The carrier asserts this practice was discontinued about December 1, 1943, by the car department supervisor giving notice to the laborers involved. Both the employees and the local committee disclaim any knowledge of cancellation of the practice either by conference or ex parte.

The record contains exhibits dated October 21, 1942, and September 11, 1943, listing the names of the car department laborers showing their assigned days off each week. Although the record contains a notice dated March 30, 1943, discontinuing the day off a week assignments in the locomotive department, listing the various occupations, there is nothing in the record other than a statement by the carrier (which is denied by the employees) to show a discontinuance of a day off a week for car department laborers, which had been

in effect for several years. Had a similar notice been given to car department laborers as was given to locomotive department laborers, the claim of the employees could not be sustained.

The one day off a week assignment had not been cancelled during the month of December, 1943, and under Rule 9 employees were entitled to time and one-half for days required to work on their assigned days off.

AWARD

Claim of the employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of April, 1946.