

Award No. 1781

Docket No. 1700

2-L&N-CM-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman Robert Burns and Carman Helper T. W. Noah were improperly relieved from service at 8:50 A. M. on May 30, (Decoration Day) 1952.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes each in the amount of eight (8) hours at the overtime rate, less the amount paid each of them for May 30, 1952.

EMPLOYEES' STATEMENT OF FACTS: Carman Robert Burns and Carman Helper T. W. Noah, hereinafter referred to as the claimants, had regular assignments at Leewood, Tennessee of 3:00 P. M. to 11:00 P. M., Monday through Friday, and 7:00 A. M. to 4:00 P. M., Tuesday through Saturday, respectively.

On May 29, 1952, the carrier's general foreman at that point notified these claimants to report for duty at 7:00 A. M., Friday, May 30, 1952. The claimants reported as required and performed duties on a regularly scheduled daily train and were relieved by the general Foreman at 8:50 A. M. For this service the claimants were compensated for two (2) hours and forty (40) minutes at overtime rate.

On each Friday before and after May 30, 1952 the work performed by the claimants on May 30 is performed by Carman L. Berry and the Claimant Noah, their assignments being from 7:00 A. M. to 4:00 P. M., Tuesday through Saturday, on combination shop track and train yard positions.

These employes (Berry and Noah) normally work the train in question and when completed, return to shop track and work on cars undergoing repairs. On May 30 (Decoration Day) there were freight cars on shop track awaiting repairs.

POSITION OF EMPLOYES: It is submitted that under the unambiguous terms of Rule 9 captioned "Assignments on Holidays", reading in part as follows:

"Employees assigned to work on holidays or those who take the place of such employees, will be allowed to complete the balance of the day unless released at their own request."

the claimants were entitled to complete the balance of the 8-hour day because they had made no request to be released.

There was no emergency here; the claimants were simply notified by the local carrier officials on May 29 to report for duty at the beginning of the first shift (7:00 A.M.) May 30, 1952 to perform work performed daily, as evidenced by the above facts.

In view of the relevant facts and the clear language of Rule 9, it must be found that the claimants were unjustly prevented from completing the balance of the day on Decoration Day, May 30, 1952. Therefore, it is respectfully requested that the Honorable Members of this Division sustain the claim of the employees in its entirety.

CARRIER'S STATEMENT OF FACTS: At approximately 6:30 A.M., May 30, 1952, Robert Burns, carman, and T. W. Noah, carman helper, were called to report for service to inspect Local No. 81 at Leewood, Tenn. They reported and after performing the service for which called were released about 8:45 A.M.

POSITION OF CARRIER: Claimants Robert Burns, carman, and T. W. Noah, carman helper, had no regular assignment on Decoration Day, May 30, 1952, a holiday. They were called at approximately 6:30 A.M. that date to report to inspect a local and after performing the service for which called were released from duty at about 8:45 A.M. For this service they were compensated 4 hours at straight time rate in accordance with Rule 7(d) of the current agreement which provides—

"Employees called or required to report for work and reporting will be allowed a minimum of 4 hours at straight time rates for 2 hours and 40 minutes or less, and will be required to render only such service as called for or other emergency service which may have developed after they were called and can not be performed by the regular force in time to avoid delays to train movements."

In handling this claim on the property the employees relied on Rule 9, reading—

"Employees assigned to work on holidays or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request. Those who are called will be advised as soon as possible after vacancies become known."

As stated in the foregoing Claimants Robert Burns and T. W. Noah had no regular assignment, nor were they called to take the place of anyone who had been assigned. They were called for a specific purpose and after performing the service for which called, were released. The position of the employees that Rule 9 is applicable is without merit, and claim as made should be denied.

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

The carrier or 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.

Carman Burns and Carman Helper Noah had regular assignments at Leewood, Tennessee, 3:00 P.M., to 11:00 P.M., Monday through Friday, and 7:00 A.M. to 4:00 P.M., Tuesday through Saturday, respectively. On May 29, 1952, they were notified by the general foreman to report for work at 7:00 A.M., Friday, May 30, a holiday (Decoration Day). They reported for work as directed and performed duties on a regularly scheduled daily train. They were then relieved at 8:50 A.M., and paid under the call rule. Claimants contend they should have been permitted to work eight hours as provided by Rule 9, current agreement, which provides:

"Employees assigned to work on holidays or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request. Those who are called will be advised as soon as possible after vacancies become known."

The agreement with this carrier provides that an employee is entitled to participate in overtime and holiday work only upon application to the proper officer, specifying the particular Sunday-holiday board and/or the miscellaneous overtime board to which he desires to be assigned. An employee so placed on these boards stands for service and is to be rotated in accordance with his standing on the board. It is plain from the rules that the service required from an employee on a holiday board is to fill an assignment of eight hours, unless released at his own request. Other overtime calls and assignments are made from the miscellaneous overtime board. This is made clear by section 8 of the interpretation of Rule 11 of the current agreement entered into on April 18, 1946, wherein it is said:

"Where both a Sunday-holiday and a miscellaneous board are maintained, all Sunday-holiday work (except as shown in NOTE next below) will be worked by men assigned to the Sunday-holiday board."

It is clear to us therefore that all holiday work will be worked by men on the Sunday-holiday board under section 8 of the agreed upon interpretation to Rule 11 and that they all are entitled to work the full day when called, except when released upon their own request, under Rule 9, current agreement. Claimants having been first out and called from the overtime board, were entitled to work eight hours. The claim is therefore valid.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1954.