

Award No. 371
Docket No. 368
2-FtS&W-MA-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 5, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

FORT SMITH AND WESTERN RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That machinist helpers who have worked on Sundays and holidays subsequent to March 1, 1932, be compensated at the rate of time and one-half for all time worked on the aforementioned days. Following is list submitted for names of men involved:

**"WAGE CLAIMS OF H. C. JOHNSON, MACHINISTS' HELPER,
FOR WAGES DUE FROM FORT SMITH & WESTERN RAILWAY
ACCOUNT OF IMPROPER WAGE ALLOWANCES ON DATES SET
FORTH IN THE SCHEDULE BELOW.**

YEAR	MONTH	DAY	HOURLY RATE	AMOUNT DUE
1935	January	1*	\$ 0.47	\$ 1.88
	"	20		1.88
	September	1		1.88
	"	2*		1.88
	"	22		1.88
1936	November	1		1.88
	"	8		1.88
	"	15		1.88
	"	22		1.88
	"	26*		1.88
	"	29		1.88
	December	6		1.88
	"	13		1.88
	"	20		1.88
	"	25*		1.88
	"	27		1.88
1937	January	1*		1.88
	"	3		1.88
	"	10		1.88
	"	17		1.88
	"	24		1.88
	"	31		1.88
	February	14		1.88
	March	21		1.88
	"	28		1.88

YEAR	MONTH	DAY	HOURLY RATE	AMOUNT DUE
1937	April	11	\$ 0.47	\$ 1.88
	"	19		1.88
	May	2		1.88
	"	9		1.88
	"	16		1.88
	"	23		1.88
	"	30		1.88
	"	31*		1.88
	June	13		1.88
	"	20		1.88
	"	27		1.88
	July	5*		1.88
	"	11		1.88
	"	25		1.88
	August	1		1.88
	"	15		1.88
	"	22		1.88
	September	5		1.88
	"	6*		1.88
	"	12		1.88
	"	19		1.88
	"	26		1.88
	October	3		1.88
	"	10		1.88
	"	17		1.88
	"	24		1.88
	"	31		1.88
	November	7		1.88
	"	14		1.88
	"	21		1.88
	"	25*		1.88
	"	26		1.88
	December	5		1.88
	"	12		1.88
	"	19		1.88
	"	25*		1.88
	"	26		1.88
1938	January	1*		1.88
	"	2		1.88
	"	9		1.88
	"	16		1.88
	"	23		1.88
	"	30		1.88
	February	13		1.88
	"	22*		1.88
	"	27		1.88
	March	6		1.88
	"	13		1.88
	"	20		1.88
	"	27		1.88
	April	3		1.88
	"	10		1.88
	"	17		1.88
	"	24		1.88
	May	1		1.88
	"	8		1.88
	"	15		1.88
	"	22		1.88
	"	29		1.88
	"	30*		1.88

under the carriers proposal No. 7, wherein the carrier proposed that such men be compensated at pro rata rates the same as for work performed on week days.

The Board in rendering its decision (disregarding individual disagreements, and rule numbers) announced certain rules applicable to all carriers listed in the decision. Among other rules promulgated by the Board was one listed as Rule 6, reading in part as follows:

"Work performed on Sundays and the following legal holidays, viz: New Years' Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, * * * shall be paid for at the rate of time and one-half, except that employes necessary for the operation of power houses, mill-wright 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 absolutely essential to the continuous operation of the railroad."

The Board therein decided the dispute involved under the carrier's proposal set up under No. 7. Therefore, the carrier's Rule 6, which had been agreed to, which carried the exceptions noted (except as provided in Rule 7, which was in dispute as to the method of payment to regularly assigned thirty day men), coupled with that part of the Board's Rule 6, making exceptions, and providing the method of payment to be made to employes regularly assigned to work Sundays and holidays, constituted a complete rule applicable to the Fort Smith and Western Railway under Decision No. 222 (Docket No. 475). Said rule was placed in effect in accordance with the decision as of August 16, 1921, on the Fort Smith and Western Railway, and payments for services rendered have been made in accordance therewith during the past eighteen years. That there was a final and binding adjudication of the question of said Railroad Labor Board and that the same was applied and accepted by the parties for many years and that claimants are now bound thereby. The carrier states that there is no basis for the claim attempted to be made herein; that it has been properly brought before this Board, and that this Board is without jurisdiction to proceed further herein, and that the same should be dismissed.

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.

It appears that an attempt was made to negotiate an agreement between the parties to this case which was to become effective July 1, 1921. This agreement contained a proposed Rule 6, which reads as follows:

"All time worked in excess of bulletin hours, except as provision of Rule 7, 9 and 10, shall be paid for at the rate of time and one-half; this to include work performed on Sundays, New Years' Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Should any of the above holidays fall on Sunday, the day observed by State, Nation or proclamation shall be observed."

The parties were in disagreement as to Rules 7 and 10. They agreed on Rule 9. Because of the fact that Rule 6 contained an exception and was subject to the provisions of Rules 7 and 10, the failure to agree on Rules 7 and 10 rendered Rule 6 ineffective.

That said carrier has not received a copy of the claim made herein, but understands that it is for the payment of time and one-half for machinist helpers for service performed on Sundays and holidays, regardless of whether or not such helpers were assigned to work seven days per week, and commonly known as "thirty day men."

Under the agreement which has been in effect between the railway and the employes, it is provided:

"The employes necessary to the operation of power houses, 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."

The positions held by the claimants were regularly assigned seven days per week as running repair and inspection forces, and were, therefore, properly compensated for Sunday and holiday work on the same basis as on week days.

That the Board may be further informed as to the rules in effect, during 1921, the railroad and its employes, represented by the shop crafts, attempted to negotiate an agreement governing rules and working conditions; during these negotiations a number of rules were agreed upon, there also being a number of disagreed rules. Such disagreed rules were submitted to the United States Railroad Labor Board for decision. In the submission made to the Board such rules and conditions as had been agreed upon, as well as those in dispute, were listed in their respective order.

Among the rules and conditions agreed upon was the rule listed as Rule 6, providing for the payment of overtime at the rate of time and one-half, except as provided in Rules 7, 9, 10 and 12.

Among the rules and conditions listed as not agreed upon, and submitted to the Board for decision, was a rule listed as Rule 7, wherein the railroad proposed that:

"Men regularly assigned to work Sundays and holidays, commonly known as 30 day men,"

would be compensated on the same basis as on week days, i. e., at pro rata rates, for Sunday and holiday work. This rule, it will be noted, was to be an exception as noted in agreed to Rule 6.

Your Board if familiar with the procedure used by the United States Railroad Labor Board in rendering its Decision No. 222 (Docket No. 475), wherein the Board "first took up the certified submission of disagreed rules from one individual carrier and disposed of said disputes, * * * subsequently the Board, after giving the matter thorough consideration, decided that there were certain of these rules that could and should be made identical for all the carriers from which disagreements had been certified to the Board. The first rules so selected for general application were those corresponding with Rules 6, 7, 9, 10, 12, 14 and 15 of the National Agreement."

The Board further stated, in substance, that the seven rules approved by the Board, corresponding to said seven rules of the National Agreement, shall apply to each of the Parties to the Dispute. Reference is made to the numbers of these rules in the National Agreement, because they are not numbered uniformly in submissions from the various carriers.

It is to be noted, therefore, that the rule itself, and not the number, was applicable to the carriers.

It will be noted that the question as to how men who were regularly assigned to work seven days per week should be compensated for work performed on Sundays and holidays was a disagreed rule and was submitted

Following the parties failure to agree on the rules, the United States Railroad Labor Board in its Decision No. 222, Docket 475, "decided there were certain rules that could and should be made identical for all the carriers * * *."

The matter having been certified to the United States Railroad Labor Board, the first rules so selected for general application were those corresponding with Rules 6 and 7. Rules 6 and 7 are the rules involved in the instant case.

The United States Railroad Labor Board decided on the terms and language of rules corresponding with Rules 6 and 7. These rules have been effective and in full force on this property since the date of the Labor Board decision.

The question of assigning work by bulletin under the United States Railroad Labor Board Rule 6 for Sundays and holidays presents another issue.

AWARD

Claim of employees denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of August, 1939.