

Award No. 525

Docket No. 459

2-NYC-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That all carmen and carmen helpers who are required to work on Sundays and holidays at the Mott Haven droptable be paid at the rate of time and one-half.

JOINT STATEMENT OF FACTS: On December 20, 1938, bulletins were posted showing that, effective December 25, 1938, the six-day positions of five carmen and one carman helper on 8:00 A.M. to 4:00 P.M. trick on droptable at Mott Haven would be abolished and that, effective on the same date, seven-day positions for five carmen and one carman helper would be created.

Rule 6 of the agreement reads as follows:

"All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

Work performed on Sundays and the following legal holidays, viz.: 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 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. Sunday and holiday work will be required only when absolutely essential to the continuous operation of the railroad."

POSITION OF EMPLOYEES: We contend that the assignment of five carmen and one carman helper at the Mott Haven droptable, New York City, to work Sundays and holidays at the straight time rate was a violation of Rule 6 of our agreement. The droptable is a part of the Mott Haven shops, and the work the men in question perform does not come within the exceptions in Rule 6, and therefore they should be paid at the rate of time and one-half for Sundays and holidays.

So long as no such requests are presented by individual employes who are regularly assigned to work on Sundays and holidays at the droptable, the management must, under Rule 8, let them fill out the day.

The change in the status of the five carmen and the carman helper here involved, effective December 25, 1938, is readily apparent, and the application of the conditions governing running repair forces, so far as the method of payment for Sunday and holiday service is concerned, is strictly in conformity with Rule 6 and the above quoted explanation from Decision 222 of its intent.

There is nothing in the shop crafts agreement that prevents changing from a six-day basis to a seven-day basis in these circumstances. Furthermore, Award No. 88 of your Board involved a claim for payment at time and one-half rates for Sunday work performed by a machinist and a machinist apprentice at Paducah Back Shop, Illinois Central System. The submission shows that Paducah Back Shop forces, including the millwright gang of which these employes were a part, were assigned to six-days' service per week, and that, on February 16, 1936, the two employes in question were assigned to Sunday and holiday service. The rule involved in that case is identical with Rule 6 of the New York Central agreement. Your Board found that the rule "permits the assignment of 'mill wright gangs' to work Sundays and holidays at straight time rate of pay. * * *" In the instant case at Mott Haven, a similar change was made by bulletin. The only difference is that "running repair forces" are here involved instead of "millwright" forces as in the Illinois Central case.

Briefly, the question involved herein is whether the work performed by these five carmen and the carman helper is running repair work of a kind that is essential to the continuous operation of the railroad. We have demonstrated the necessity for the work on Sundays and holidays, and the joint statement of facts indicates that the employes were regularly assigned thereto by bulletin. Manifestly, where there is necessity for repair work which cannot be held over for attention on week days without interfering with train service such work constitutes running repair work which is essential to the continuous operation of the railroad; consequently, we believe your Board will recognize that there is no violation of rules in this case and will deny 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.

Rule 6 of the agreement provides that: "* * * Sunday and holiday work will be required only when absolutely essential to the continuous operation of the railroad."

A fair application of Rule 6 would be to work no more men on Sundays and holidays than would be necessary.

It is agreed that approximately sixty per cent (60%) of the work done came within the exceptions of Rule 6 of the agreement.

The men and the management are in a better position to determine the number of men necessary to be worked and should make every possible effort to carry out the spirit and intent of the provisions of Rule 6 and this Divi-

sion directs that a joint survey be made to determine whether any reduction of the number of men worked can be made.

AWARD

Award rendered in accordance with the aforesaid findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1941.