Award No. 642
Docket No. 655
2-TC-CM-'41

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 68, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Bailey Woodall, a carman, and John Hedgepath, a carman's helper, should be paid at the rate of time and one-half for six hours, and straight time for two hours for work performed on Saturday, February 3, 1940, as provided by fourth paragraph of Rule 4 and Rule 7 of the agreement between the Tennessee Central Railway Company and their shop crafts employes, which read as follows:

Fourth paragraph of Rule 4:

Employes called or required to report for work and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes work or less.

Rule 7:

An employe regularly assigned to work at a shop, enginehouse, repair track, or inspection point, when called for emergency road work away from such shop, enginehouse, repair track or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station and straight time rate for all time waiting or traveling.

If, during the time on road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed.

Employes will be called as nearly as possible one (1) hour before leaving time and on their return will deliver tools at point designated.

If required to leave home station during overtime hours, they will be allowed one (1) hour preparatory time at straight time rate.

EMPLOYES' STATEMENT OF FACTS: On Friday afternoon, February 2, 1940, Mr. H. E. Lyell, general car foreman, instructed Messrs. Woodall and Hedgepath to return to duty at 7:30 A. M. Saturday the 3rd, and go to Lebanon, Tennessee, and pack journal boxes on some cars which were located there.

discussion of the case, it was stated the claim was amended under that part of Rule 7 which reads, "* * * will be paid * * * for all time worked in accordance with the practice at home station * * *." On the date of this claim, time book records show that at the Nashville shop, forty-nine (49) employes coming within the scope of the shop craft agreement made 390 hours, and fifty-three (53) employes of other classes, including hostlers, hostler helpers, callers, stationary firemen and laborers, etc., made 410 hours, total of 800 man-hours, all of which was paid at the straight time rate. None of these men were assigned to work on Saturday, February 3, 1940, for the purpose of straight time rate of pay, as this requirement for such purpose is applicable only to Sunday and holiday work.

The right of the railway company to reduce hours to forty (40) per week as provided in Rule 21 has never been questioned. The right to work six days per week at the straight time rate has not been questioned prior to the filing of this claim. In the discussion of this case with the general committee, they admitted that all the men in the shop or in a particular department, or in a particular craft who remained on a forty (40) hour per week basis could be changed to a six-day per week basis by giving oral notification, but asserted that a part of the men in a particular craft could not be so handled. The rules of the agreement, however, do not support such a contention. In Award 183, Docket 198, covering question of reduction in force, your Board held that "when force reduction is made, the men may be laid off, either all or part." Our Rule 21 does not state any different principle regarding force reduction or reduction of hours, and by the same reasoning, when the force is increased, or the hours are increased, it could apply to one employe or all of them. In the restoration of force or increase in hours, the rule does not require any specified advance notice, nor does it specify the manner in which notice shall be given. Notice was given in the instant case just as it has been given since the contract became effective. There was no violation of the rules or change in practice in increasing the hours of service of these men and there is no rule in the agreement which provides for penalty payment under such circumstances.

In the rebuttal evidence offered by the employes in Award 448, Docket 490, they direct attention to supplement No. 6 to Decision 222 of the United States Railroad Labor Board as being a similar case to that docket. The railway company has not understood this reference in connection with the docket referred to. However, as the employes rely on the same rule in the instant case, i. e., the fourth paragraph of Rule 4, it is here pointed out that the rules as written in the agreement effective October 1, 1922, were agreed upon subsequent to the issuance of Addendum No. 6 to Decision 222. We, therefore, do not consider that an interpretation of the United States Railroad Labor Board on the rules as handed down by that Board should have any bearing on the construction of the particular paragraph of the rule referred to with correlated rules as written in our agreement.

Your Board's attention is directed to the fact that the employes and the railway company were agreed that the fourth paragraph of Rule 4 was applicable in the circumstances recited in Award 448, Docket 490, and the decision in that docket was understood to be an interpretation of the call rule, and it has been followed without exception. In the instant case the circumstances are entirely different as shown by the record, to which the call rule has no application whatsoever; but on the other hand, the hours of the complainant employes were increased under the provisions of Rule 21 and they were properly compensated at the straight time rate for the full hours of their assignment on February 3, 1940.

For the reasons set out above, there is no justification for the payment of time and one-half rate, and the railway company earnestly petitions your Honorable Board to 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 waived right of appearance at hearing thereon.

The evidence of record warrants an affirmative award.

AWARD

Carman Bailey Woodall and Carman Helper John Hedgepath shall be paid time and one-half for six hours, and straight time for two hours, for work performed on Saturday, February 3, 1940.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of July, 1941.