

Award No. 836
Docket No. 767
2-DT&I-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 138, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Under the controlling agreement, the following carmen are each entitled to eight (8) hours pay at straight time on Labor Day, September 1, 1941:

G. C. Hannum	R. A. Duncan	M. E. Tennant
L. R. Tibbitts	Stanley Henry	M. P. Yardley
		J. W. Downam

EMPLOYEES' STATEMENT OF FACTS: On August 29, 1941, the carmen named in the above statement of claim were instructed to lay in Monday, September 1, 1941, by the carrier.

These said carmen are regularly assigned as inspectors in Rouge yards, Fordson, Michigan, six (6) days a week, with Sunday off as relief day.

These carmen for eight (8) hours, six (6) days a week service, Monday to Saturday inclusive, including the seven legal holidays, are paid straight time.

These carmen if used on relief day, Sunday, are paid at the rate of time and one-half.

These carmen turned in time cards for eight (8) hours pay on Labor Day, Monday, September 1, 1941, and the carrier refused to pay them.

POSITION OF EMPLOYEES: The employes contend that the aforesaid claimants were regularly bulletined by the carrier during a calendar year to work New Year's, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, and with each Sunday off as relief day, for the sole and express purpose of paying straight time to said employes for service rendered on the said seven specified holidays.

This contention is affirmed by carrier and the controlling agreement effective November 1, 1934, and which in part reads:

- (a) "Employes . . . who are bulletined to work **Sundays** and the following legal **holidays**, viz., New Year's, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, . . . will be paid at straight time." (See Rule 3, third paragraph.)

The employes contend that in order to be able to pay straight time on Sundays and holidays within the meaning of Rule 3, the employes must be bulletined to work **not less** than all Sundays and holidays specified in the rule. The carrier is not attempting to pay the employes at all for the time they were off on Labor Day. The employes are attempting to impose on Rule 3 of the agreement the interpretation that "Employes essential to the continuous operation of the railroad" means jobs assigned to work seven days per week and none else. That interpretation does not apply to this agreement as the agreement defines essential work as that which cannot be delayed twenty-four hours without prospect of delaying transportation.

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.

The evidence of record supports the conclusion, under Rule 3 of the agreement, that employes regularly assigned to work six days per week, with Sunday off as relief day, are not thereby guaranteed employment on holidays mentioned in the rule when their services are not essential to the continuous operation of the railroad, provided due notice of lay-off is given them. In these circumstances no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.