

Award No. 995

Docket No. 914

2-MP-MA-'44

**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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: a. That the carrier at Kansas City, Missouri, under provisions of controlling agreement improperly compensated Machinist E. Van Beceleare, C. Dennis and W. Bell, also Helpers H. W. Hemminger, C. A. Conno and W. H. Nelson for services rendered date of Sunday, January 17, 1943.

b. That the carrier be ordered to additionally compensate claimants at rate of time and one-half for services rendered January 17, 1943.

EMPLOYEES' STATEMENT OF FACTS: At Kansas City, Missouri, carrier maintains large roundhouse and machine shop force. All employes of machinist craft in roundhouse are regularly assigned three shifts of eight hours each per twenty-four hour day. Day shift about equally divided as to six and seven day per week assignment.

Prior to January 14, 1943, three machinists, namely, Biery, Porter and Hammond, who were regularly assigned by bulletin under provisions of controlling agreement and Rule 3 (b) thereof to work Sundays and holidays, left the service of carrier, Biery and Porter enlisting in U. S. Navy and Hammond resigning. Two helpers were promoted to higher classification and the third man was inducted into U. S. Army.

As result of the three machinists and one helper leaving service of carrier, and the promotion of two helpers to higher classification, vacancies were created for three machinists and three helpers on Sunday and holiday assignment. Carrier did, under date of January 14, 1943, properly post bulletin advising of the vacancies and requesting bids on same. (See employes' Exhibit A-1, copy of bulletin, submitted.)

The referred to bulletin, dated January 14, 1943, did not expire until 11:00 A. M. January 19, 1943; therefore, no employes were or could be regularly assigned to these vacancies prior to 11:00 A. M. January 19, 1943.

Claimants were assigned by carrier to fill or "ride out" bulletined vacancies pending receipt of bids and permanent Sunday and holiday assignments, and for such service were compensated at straight-time rate for date of Sunday, January 17, 1943.

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 3 (b) of the controlling agreement first provides for payment at the rate of time and one-half for work performed on Sundays and specified legal holidays and then sets forth certain circumstances under which employes will be compensated for Sunday and holiday work on the same basis as on week days.

It should be noted that the time-and-one-half provision is made applicable to **work**, and that the straight-time exceptions are made applicable to **employes**.

The exceptions embrace employes who perform specified types of work and, at the same time, are required to perform these types of work under specified conditions of assignment. Thus, the exceptions are made applicable to "employes necessary to the operation of power houses, millwright gangs, heat-treating plants, train yards, (and) running-repair and inspection forces"; and these employes must be "regularly assigned by bulletin to work on Sundays and holidays," or they must be "men called to fill their places on such regular assignment." It is provided, furthermore, that "Sunday and holiday work will be required only when essential to the continuous operation of the railroad."

The claimants in this proceeding were called to perform work on Sunday, January 17, 1943. Both sides agree that the work itself which was involved falls within the exceptions to the rule, and that it was essential to the continuous operation of the railroad. They also agree that the claimants were not regularly assigned by bulletin to work Sundays and holidays in connection with the work here involved; that the machinists and helpers who had been regularly assigned for this Sunday and holiday work had vacated their assignments; and that (with one exception claimed by the carrier) these vacancies had not been regularly filled prior to January 17, 1943. In other words, the claimants were called to perform this work temporarily, while a bulletin was pending under which regular assignments were subsequently to be made.

The sole issue involved in this proceeding, therefore, is whether these claimants were called to fill the places of employes regularly assigned by bulletin to work on Sundays and holidays.

It is perfectly clear, and admitted by the carrier (except in one instance), that on Sunday, January 17, 1943 there were no employes regularly assigned by bulletin to work Sundays and holidays on the jobs here involved. The regular assignments (except in one instance) were not made until January 19, 1943.

In these circumstances the claimants (except as subsequently noted) were entitled to be paid at the rate of time and one-half for the work performed by them on Sunday, January 17, 1943.

The carrier asserted in its statement of facts that Helper Nelson, one of the claimants, filled the place of a regularly assigned employe, since in this instance the vacated assignment had been regularly filled by bulletin January 5, 1943; that this helper worked both his own shift and that of the regularly assigned employe (Rose); and that under these circumstances he was paid "8 hours at pro rata rate for working his own shift and 8 hours at time and one-half, or the overtime rate, for doubling over on Rose's shift." Since the

truth of this assertion was not questioned by the representatives of the employes, the findings and award in this proceeding are not applicable to Helper Nelson.

The carrier also asserted that Helper Hayes, and not Helper Hemminger, filled the vacancy for which claim was filed on behalf of Helper Hemminger. Either Helper Hayes or Helper Hemminger is entitled to the additional compensation, as may be determined by the parties on the basis of the facts.

AWARD

Claim sustained to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.