

Award No. 996

Docket No. 921

2-Erie-BM-'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. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement, the carrier be ordered to pay Boilermaker L. Gacek and Boilermaker Helper R. Bielawski, each time and one-half, or four (4) additional hours for their services, Sunday, February 28th, 1943.

EMPLOYEES' STATEMENT OF FACTS: At the East Buffalo roundhouse, Buffalo, New York, the carrier put Jordan spreader 03491 in the roundhouse for repair sometime Saturday, February 27, 1943.

Boilermaker Gacek and Boilermaker Helper Bielawski were properly assigned at straight time to work eight (8) hours from 7:00 A. M. to 3:00 P. M. on Sunday, February 28, 1943 on locomotive and inspection work. The carrier, however, assigned these employes to work their regular eight (8) hours on Jordan spreader 03491 and for which service they were paid straight time. The carrier has declined to pay them at the rate of time and one-half for this service.

The work was not completed on Sunday, February 28, 1943, and the men were not assigned to work on the spreader again until Saturday, March 6, 1943, when they completed their assigned work on the spreader.

The following week of March 7, 1943, machinists were assigned to do work on the spreader so that it was not fully repaired for approximately two (2) weeks.

The agreement controlling is dated effective: rates of pay, July 1, 1942; and rules August 1, 1942.

POSITION OF EMPLOYEES: That Rule 4 (b) of the agreement between the Erie Railroad Company and Erie System Federation No. 100, effective July 1, 1942, as to rates of pay, and August 1, 1942 as to rules, was violated when L. Gacek, boilermaker, and R. Bielawski, boilermaker helper, were compensated at straight-time rates for work performed on Jordan spreader 03491 on Sunday, February 28, 1943 for the following reasons:

Rule 4 (b) as quoted above, reads as follows:

Service performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day,

Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that 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 employees necessary to the operation of powerhouse, millwright gangs, heat treating plants, train yards, running 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 confined to the operations specifically named above and will be required only when absolutely essential to the continuous operation of the railroad.

The work performed by these claimants was outside of their specifically assigned duty at straight time within the meaning of the rule, and therefore, they are entitled to be paid time and one-half for their services on February 28, 1943.

CARRIER'S STATEMENT OF FACTS: Saturday, February 27, 1943, Buffalo, New York, was experiencing a severe snow storm. The maintenance of way department was using Jordan spreader 03491 as a snow plow. It needed some emergency repairs and was brought to the Buffalo roundhouse by the maintenance of way department. The required repairs were made by mechanical department forces at Buffalo on Sunday, February 28, 1943. The claimants, Boilermaker Gacek and Boilermaker Helper Bielawski, worked on the machine and were both regularly assigned by bulletin to work on Sunday, and accordingly were properly paid on the same basis as on week days, all in accord with Rule 4.

POSITION OF CARRIER: As shown in the ex parte statement of facts, a severe snow storm occurred in Buffalo, New York, Saturday, February 27, 1943. The maintenance of way department was using a Jordan spreader as a snow plow. The Jordan spreader needed some emergency repairs and it was brought to the Buffalo roundhouse for these repairs by the maintenance of way department.

The two claimants, Boilermaker Gacek and Boilermaker Helper Bielawski, worked repairing this spreader; however, the storm abated and when the ditcher was made ready for service it was not then needed and it remained at Buffalo roundhouse for a couple of days. During the period that it remained in the roundhouse other repairs were made on request of the Jordan spreader operator, but these later repairs had no direct relation to nor did they interfere with the machine being used as a snow plow.

The employes in progressing this claim cite Rule 4 and alleged that such work may not be performed on Sundays at straight time rates and it was the opinion of railroad that this emergency repair work of maintenance of way machines definitely comes within the scope of running repairs.

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 supports the conclusion that the work performed by the claimants on Sunday, February 28, 1943, was running-repair work absolutely essential to the continuous operation of the railroad, within the

meaning of Rule 4 (b) of the controlling agreement, and that the claimants were paid for this work in conformity with the provisions of this rule of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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