

Award No. 1036

Docket No. 957

2-MP-CM-'44

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: a. That the carrier unjustly dealt with Carman B. C. Elliott on Sunday, November 22, 1942, when he was only paid straight time for his services from 3:00 P. M. to 11:00 P. M.

b. That in consideration of the aforesaid, the carrier be ordered to additionally compensate Carman Elliott for his services at the rate of time and one-half.

EMPLOYEES' STATEMENT OF FACTS: At Kansas City, Missouri, the carrier maintains a car department and a force of approximately 175 carmen (mechanics). Some of these carmen are regularly assigned to work seven days a week and the balance of the force are regularly employed on the basis of six days a week, exclusive of Sundays and holidays. This claimant was included in this six-day-work-week force.

On November 19, 1942, the following combination bulletin appeared on all bulletin boards at Kansas City, including train yards:

Kansas City, Mo.
November 19, 1942.

Car Department Bulletin Number 73

Reference to my bulletin number 72, the following assignment has been made.

One (1) Car Inspector six days per week, location James Street has been assigned to W. H. Cade.

Bids will be received by the undersigned until 1:00 P. M. November 24th for the following position.

Position.....One car inspector
Assignment.....7 days per week
Hours.....3:00 P. M. to 11:00 P. M.
Location.....Second Train Yard.

(Vacancy W. H. Cade)

S/ E. H. Hinrichs
General Car Foreman.

awarding vacancy, six days per week, location James Street, to W. H. Cade. That same date, November 19, under the same Bulletin No. 72, seven-day position vacated by W. H. Cade was advertised, bulletin (No. 73) to expire 1:00 P. M., Monday, November 23.

master mechanic on the same basis as was the instant case—claim of Mr. Elliott—but thereafter appealed to the chief mechanical officer. On October 23, 1940, mechanical superintendent, in letter addressed to General Chairman Byrne, acknowledged Mr. Byrne's letter of October 7 addressed to Mr. Garber, chief mechanical officer, and requested that Mr. Byrne come in and discuss the cases with him. The record further indicates that following this discussion the cases were paid by the then Mechanical Superintendent F. R. Hosack, and Mr. Byrne was so notified on November 27, 1940.

It is noted that Mr. Byrne, in the presentation of the employees' case, stated to Mr. Roll in his letter of April 26, 1943, that the Lancaster cases, including claims of Messrs. Gorman and Williams, car inspectors at Kansas City, were appealed to the personnel office and discussed in conference on November 26, 1940. The carrier's record does not sustain Mr. Byrne's contentions. However, it does indicate that the two cases were docketed for discussion in a November, 1940, conference but when they were reached on the docket, on November 28, 1940, they were withdrawn by the committee account having been settled prior to the conference. The employees were represented at this conference by Vice President Wicklein of the Railway Employees' Department, A. F. of L., as well as General Chairman Byrne of the carmen's organization.

Irrespective of the fact that there were two claims heretofore paid by the carrier, this did not within itself establish that as being a proper application of the rules of the wage schedule agreement. To the contrary, the submission of these two cases in 1940 was indicative of the fact that it was not the practice on the railroad to compensate employees called on Sundays to fill regularly assigned seven-day positions at the punitive overtime rate. If it had been the practice, these two cases would not have arisen in 1940.

The carrier feels that your Honorable Board will give due consideration to the fact that an isolated payment on a time claim made, as was done in this instance, could not properly establish an acknowledged interpretation of a schedule rule that not only affected the carmen's craft but other shop crafts, viz: machinists, boilermakers, blacksmiths, sheet metal workers and electricians, all parties to the July 1, 1936, agreement between System Federation No. 2, Railway Employees' Department, A. F. of L., and the railroad. The carrier emphatically denies that there was any accepted mutual understanding between the signatories of the July 1, 1936, agreement that men called to fill the places of absent employees, or men called to fill positions temporarily vacated by a regular assignee due to a position being on bulletin, would be paid at the overtime rate for the services they performed on the regular assigned job on Sundays and holidays. To the contrary, it has not been our practice to so apply the rules. The practice has been to compensate such employees on the same basis as on week days. This method of payment has been found to be in conformity with the rules of the Agreement. See Awards Nos. 875 and 985.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

We adhere to the view that under the terms of Rule 3 (b) the time-and-one-half provision is made applicable to the work, and the straight-time exceptions are made applicable to the employees. Award 995. The work here involved was, therefore, subject to the time-and-one-half provision of the rule. The straight-time exception, which relates to the employees, and upon

which carrier relies, provides the men called to fill the place of men who are "regularly assigned by bulletin to work on Sundays" will receive straight time. It is clear that on Sunday, November 22, 1942, there was no employee regularly assigned by bulletin to work Sundays on the job here involved. The exception upon which carrier relies does not apply, and the work performed should be compensated at the time-and-one-half rate under the general provisions of Rule 3 (b).

AWARD

- (a) Sustained
- (b) Sustained

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of November, 1944.