

Award No. 1103

Docket No. 1043

2-KCT-FO'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)
KANSAS CITY TERMINAL RAILWAY COMPANY**

Dispute: Claim of Employees: That under the controlling agreement and Rule 5 thereof, the carrier be ordered to additionally compensate, at the rate of time and one-half, the following employes for the service which they performed on the dates opposite their respective names:

H. G. Loney—8 hrs. each on Dec. 12 and 26, 1943

L. A. Dave—8 hrs. each on Dec. 12 and 26, 1943

EMPLOYEES' STATEMENT OF FACTS: The above listed employes are employed by the Kansas City Terminal Railway in the car department as laborers and are assigned a regular day off each week, which in each case as indicated below was,

H. G. Loney—Sunday

L. A. Dave—Sunday

and in conformity with a prior procedure, as disclosed by documents dated October 21, 1942, and September 11, 1943, submitted and identified as Exhibits A and B.

These claimants were ordered to report for work on each day shown opposite each name listed above and was required to work for straight-time rate. However, between October 21, 1942, and December 5, 1943, these claimants were paid the time and one-half rate for each Sunday worked.

The controlling agreement is dated effective April 6, 1939.

POSITION OF EMPLOYEES: In support of our claim in this case, your attention is called to Rule 5, which reads as follows:

“Work 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 when any of the above holidays fall on Sunday the day observed by the State, Nation or proclamation, shall be considered the holiday), will be paid for at rate and one-half except that employees or those required to work in place of such employees who are regularly assigned to work on Sundays and Holidays will be compensated on the same basis as on week days. Sunday and holiday work will be required only when essential to the continuous operation of the railroad.”

It is our position that the employes listed above were not regularly assigned to work on Sundays and holidays, therefore are covered by that part of Rule 5 which reads: (we quote Rule 5 in part)

“Work performed on Sundays,—will be paid for at rate and one-half.”
(underscoring ours)

Rule 5 is a Sunday and holiday rule, which provides for the payment of rate and one-half for Sunday and holiday work under certain stipulations. This rule has nothing to do with the seventh days worked, consequently Rule 5 does not sustain the position of the employees. No other rule is applicable, because the assignments were changed from six days to seven days per week prior to the dates of the claims. The carrier, therefore, respectfully requests that the claim of the employees be denied by the Board.

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 meanings 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 5 provides for the payment of time and one-half for work performed on Sundays and holidays except to those who are regularly assigned to work or those who are required to work in the place of such employes.

The facts of record show that the claimants were not regularly assigned to work all Sundays in the month of December 1943, nor were they working in the place of such employes.

AWARD

Claim of the employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of November 1945.