

Award No. 2024

Docket No. CL-1965

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

ST. JOSEPH UNION DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood for payment of a minimum eight (8) hour day to Mail Truckman Leroy Ping, on December 10th, 11th, and 12th, 1940; to Mail Truckman F. R. Farris on December 11th, 12th, and 13th, 1940; and to Mail Truckman, W. B. Sexton on December 13th and 14th, 1940.

EMPLOYEES' STATEMENT OF FACTS: Mail Truckman Leroy Ping, seniority date February 24th, 1934, was worked and paid as follows on dates shown;

Date	Hours worked	Number hours paid at straight time rate
December 10th, 1940	9:45 AM to 11:45 AM 3:30 PM to 4:30 PM	3 1—Total 4 hours
December 11th, 1940	9:45 AM to 11:45 AM 3:30 PM to 4:30 PM	3 1—Total 4 hours
December 12th, 1940	9:45 AM to 12:15 PM 3:30 PM to 4:30 PM	3½ 1—Total 4½ hours

Mail Truckman F. R. Farris, Seniority date August 21st, 1936, was worked and paid as follows on dates shown;

Date	Hours worked	Number hours paid at straight time rate
December 11th, 1940	6:00 PM to 9:00 PM	3—Total 3 hours
December 12th, 1940	5:30 PM to 9:00 PM	3½—Total 3½ hours
December 13th, 1940	10:00 AM to 12:30 PM 3:30 PM to 4:30 PM	2½ 1—Total 3½ hours

Mail Truckman W. B. Sexton, seniority date October 19th, 1939, was worked and paid as follows on dates shown;

Date	Hours worked	Number hours paid at straight time rate
December 13th, 1940	5:30 PM to 9:00 PM	3½—Total 3½ hours
December 14th, 1940	5:30 PM to 9:30 PM	4—Total 4 hours

Claim for a minimum day's pay of eight (8) hours for Mail Truckmen Ping, Farris and Sexton was presented to Management on January 20th, 1941 and payment was refused by Mr. F. B. Whitman, President of the Company on June 21st, 1941.

POSITION OF EMPLOYEES: There is in evidence before the Board an agreement between the parties with effective dates of March 16th, 1922, and September 1st, 1937, and we cite supporting rules thereof:

"Rule No. 37. Except as otherwise provided in Rules 38 to 44, both inclusive, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

"Rule No. 39. Employees required to report for work at regular starting time, and prevented from performing service by conditions beyond control of the carrier, will be paid for actual time held with a minimum of two (2) hours.

"If worked any portion of the day, under such conditions, up to a total of four (4) hours, a minimum of four (4) hours shall be allowed. If worked in excess of four (4) hours, a minimum of eight (8) hours shall apply.

"All time under this rule shall be at pro rata. This rule does not apply to employees who are engaged to take care of fluctuating or temporarily increased work which cannot be handled by the regular forces; nor shall it apply to regular employees who lay off of their own accord before completion of the day's work."

"Rule No. 4. Seniority begins at the time the employee's pay starts on the seniority district and in the seniority class to which assigned, and will apply only in filling new positions or vacancies, and in the reduction of forces. Where two or more employees enter the service upon the same day, the appointing officer shall be the judge, in establishing their seniority rights."

Memo. of Agreement of September 1st, 1937.

"Seniority District. The following seniority district is hereby continually established over which employees covered by seniority roster shall be permitted to exercise their seniority. Seniority district thus established shall be continued unless and until changed by mutual agreement between the Management and the accredited Representative of the employees: Seniority district to include all positions and all employment of all that class of Clerical, office, station and storehouse employees covered in scope Rule No. 1. of current Agreement with the St. Joseph Union Depot Company."

Current Seniority Roster of Clerical, Office, Station and Storehouse Employees is shown as Employees' Exhibit (1).

Mail Truckman Ping it will be noted has a seniority date of February 24th, 1934 and Mail Truckman Farris a date of August 21st, 1936 while Sexton's date was October 19th, 1939. These men were worked and paid less than the eight hours minimum provided in Rule No. 37 on dates shown which we contend is a flagrant violation of this rule.

The exceptions to eight hour minimum provided in Rule No. 37 do not apply here as these men were not prevented from performing service by any condition beyond control of the carrier. The days these men were worked are a part of the regular Holiday mail rush period.

fluctuating or temporary character, such as that which is made a basis of dispute in this instance, and the construction placed upon the rule by the carrier has been upheld either definitely or by unmistakable implication in every award of the Third Division bearing on this particular subject.

The record of practice is conclusively evidenced by timerolls (Carrier's Exhibit A), which show that the regular force at the St. Joseph Union Depot has been augmented by part-time employees for several days immediately before Christmas every year since 1923, and that such employees have been compensated for actual hours of service.

In the light of the abundance of evidence which supports the Carrier's position in this case, including record of precedent established by this tribunal, the position of the petitioning organization is not tenable and should not be sustained.

OPINION OF BOARD: This case is controlled by our Award No. 2023 of this date and the claim must be allowed for the reasons therein stated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim will be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of October, 1942.

DISSENT TO AWARD NO. 2024, DOCKET CL-1965

Dissent is expressed to this Award for the reasons given in our dissent to Award No. 2023, Docket CL-1964, issued concurrently.

/s/ R. F. Ray
/s/ C. P. Dugan
/s/ R. H. Allison
/s/ A. H. Jones
/s/ C. C. Cook