

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**KANSAS CITY TERMINAL RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(a) That the Carrier incorrectly paid Paul Smith, Union Station Maintainer, for work performed on February 17 and 24, and March 3 and 17, 1943; and

(b) That Paul Smith be paid the difference between what he received at straight time rate and what he was entitled to receive at the rate of time and one-half time for eight hours on each of the above dates.

**EMPLOYES' STATEMENT OF FACTS:** Paul Smith held a regular bulletin position as station maintainer. The bulletin advertising the position to which he was assigned provided for an assignment of eight hours per day—8:00 A. M. to 4:30 P. M., 30 minutes for lunch, six days per week—Wednesday being assigned as his day off. The rate of pay for this position was \$200.60 per month.

On completion of his assignment at 4:30 P. M. on Tuesday February 16, Tuesday February 23, Tuesday March 2, and Tuesday March 16, 1943, Paul Smith was instructed and required by the Carrier to report for work at 8:00 A. M. on Wednesday February 17, Wednesday February 24, Wednesday March 3, and Wednesday March 17, 1943 to relieve Station Maintainer George E. Thompson who was taken off his regular assignment on these dates and used on another job. The claimant complied with instructions and did perform work—eight hours each day—on his regular days off, Wednesday February 17, Wednesday February 24, Wednesday March 3, and Wednesday March 17, 1943.

For service rendered on these dates claimant received pay at the straight time rate whereas he was entitled under Rule 33 to be paid at the rate of time and one-half when notified or called to perform work not continuous with the regular day's work period.

The claim for Paul Smith was handled as provided for in the agreement up to and including the highest officer designated to handle same and the Carrier declined to allow the claim. The Employees' representative made request upon the Carrier to submit the claim as an unadjusted dispute to the National Railroad Adjustment Board, and the Carrier declined to do so.

There is an agreement in effect between the parties which is hereby made a part of this Statement of Facts.

In view of the information in the Superintendent's letter of May 4, 1943, quoted above, showing that the Organization's representatives themselves did not consider Rule 33 a seventh day rule inasmuch as they presented such a rule along with their proposed Sunday and Holiday rule, it is quite evident that there is no basis for their claim. The Carrier, therefore, requests that the Employees' claim in this case, both Sections (a) and (b), be denied.

**OPINION OF BOARD:** The question presented by this case is identical with that disclosed by Docket No. MW-2589, decided by Award No. 2557. On the authority of that award, and for the reasons therein stated, it is concluded that the claimant herein is entitled to prevail.

**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 carrier violated the agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 11th day of May, 1944.