

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 Charles Walburn, Union Station Maintainer, for work performed on December 20 and 25, 1942; and

(b) That Charles Walburn 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: The Union Station maintenance employes in the Union Station at Kansas City, Missouri are assigned eight hours per day, six days per week, the seventh day off, which day off is staggered among the employes.

Charles Walburn held a bulletined position as Union Station relief maintainer relieving other maintainers on their seventh day, and on December 14, 1942 by instructions of his foreman he was taken off his regular assigned job and instructed that he was assigned to a maintainer job beginning that night, account the holiday rush, the hours of assignment to be from 12:00 midnight to 8:00 A. M. He worked this job up to December 30—a period of 15 days—when the job was taken off and he was returned to his former position.

Charles Walburn was required to work on Sunday, December 20, and on Christmas, December 25, 1942 and was paid only the pro rata rate of pay whereas he was entitled under Rule 36 to be paid at the rate of time and one-half.

The claim for Charles Walburn 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 Employes' representative made request upon the Carrier to submit the claim as an unadjusted dispute to the Third Division, 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.

Walburn was paid an additional day at pro rata for work performed on December 25, 1942."

In discussing this case representatives of the Organization have held that the assignment being worked by Walburn on the dates of the claim was a temporary assignment of an emergency nature. On the contrary, however, it is an assignment which is made every year during the Christmas season when additional protection is necessary for the maintenance of our mail conveyors. There is no emergency involved, but if there were, it would make no difference in this case because there are no exceptions in the second paragraph of Rule 36 and the provisions thereof would apply in any situation, that is, whether the position were temporary or permanent.

The Carrier respectfully requests that the Employees' claim be denied.

OPINION OF BOARD: During the year 1942 the claimant was a regularly assigned relief maintainer at the Union Station at Kansas City. This position called for eight hours work per day, six days per week, with the seventh off, which day off was staggered among other employees. The wages were \$200.60, computed upon the basis of a month of 204 hours. Because of performing his six days work in the five day period from Sunday to Thursday, inclusive, claimant's regular off-duty days were Friday and Saturday.

From December 14, 1942 until December 30, both inclusive, claimant was assigned to the maintenance of the mail conveyor, because of the rush incident to the Christmas season. Under this assignment the claimant worked on Sunday December 20, and Christmas Day, December 25, 1942, for which he was paid at his straight time rate. He claims pay at rate and one-half for eight hours on each of said days, by virtue of Rule 36 of the applicable Agreement of May 24, 1941. Said rule reads:

"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 the 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.

"The present practice of paying an additional day over the monthly rate at prorata rate for holidays worked shall be continued."

The claimant's contention is predicated upon the proposition that in the performance of the service here involved he was not regularly assigned to work on Sundays and holidays, nor was he working in the place of an employee who was so regularly assigned; but that he was assigned to a temporary or emergency job for fifteen days only. He concludes that he comes within the forepart of Rule 36, rather than under the so-called exception at the end thereof. For the carrier it was said: (1) that while Friday (December 25) would ordinarily be a regular relief day for the claimant, he is bound by the concluding sentence of Rule 36, which perpetuates a recognized practice of compensating for work done on a holiday as an additional day at the pro rata rate, which was paid; and (2) that, in any event, Sunday December 20, was a regular work day for the claimant, for which he was entitled to be compensated only at the pro rata rate.

* The employees concede that the carrier is not obligated to pay time and a half on Sundays and holidays to an employee regularly assigned to work seven days per week. This reduces this controversy to the question as to whether from December 14 to 30, 1942, this claimant was holding a regular six-day or a regular or temporary seven-day per week assignment. It is asserted and

undisputed that the claimant's regular position was bulletined; that all new positions, whether temporary or permanent or of long or short duration, are required to be filled by that process; and that no attempt was made to comply with that requirement in connection with the seasonal mail conveyor assignment. These facts force the conclusion that the claimant was occupying a non-regular rather than a regularly assigned position. In that capacity claimant comes within the general provisions of Rule 36, and this entitles him to pay at rate and one-half for the days in controversy, unless he is excluded by the concluding sentence of the rule.

We find no conflict between the major premise of Rule 36 and the last sentence thereof. Employees assigned to work on Sundays and holidays, including those required to work in the place of employees so assigned, are compensated on the same basis as on week days; all others performing work on Sundays and the designated holidays are entitled to be paid at rate and one-half. The provision that: "The present practice of paying an additional day over the monthly rate at pro rata rate for holidays worked shall be continued," in no wise qualifies the scope or effect of that which precedes it. The quoted sentence is not, in reality, an exception. It is rather in the nature of an additional coverage for the benefit of those working under actual seven day per week assignments. So construed, Rule 36 is clear and unambiguous and all of its provisions may be given full force and effect without resorting to such extraneous considerations as mediation negotiations and past practices.

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 employee 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.