

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim that W. Honeyman, whose regular assignment was that of signal maintainer at tower 5, be paid the difference between straight time rate of \$1.00 per hour and the time and one-half rate for all services performed on Thursday, June 11, 1942, (his assigned seventh day off duty), when he was required by the management to fill the position of leading signal maintainer, first shift, at tower 5, taking the place of M. H. Napper, the employe regularly assigned to such position. Amount claimed \$4.00.

EMPLOYEES' STATEMENT OF FACTS: W. Honeyman was regularly assigned as Signal Maintainer on the first shift, tower 5, with Thursday of each week as his regular assigned day off duty. This assignment required him to work Sundays at the straight time rate, as provided in Article VI, Section 2, which 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 by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the Carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

Honeyman was required by the management to relieve M. H. Napper, Leading Signal Maintainer, first shift, tower 5, from Sunday, June 7, to June 12, 1942, inclusive. In doing so he worked his regular assigned day off duty—Thursday, June 11, 1942.

As indicated in the Statement of Claim, Honeyman was paid at the straight time rate instead of at time and one-half rate as the above quoted rule provides.

The agreement in effect between the parties, bearing effective date of June 12, 1923, governs the hours of service and working conditions for the Signal Department employes of the Kansas City Terminal Railway Company, and among other conditions covered by the agreement, the following is included: "This Agreement shall become effective June 12, 1923, and remain in full force and effect until superseded or amended." The rules involved in this dispute have not been superseded or amended since June 12, 1923.

POSITION OF EMPLOYEES: It is the position of the Brotherhood in this claim that W. Honeyman is entitled to the difference between the straight time

make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement."

In addition to the foregoing it is the Carrier's request that your Honorable Board review the written opinion of the Carrier members of your Board on this subject, in their "Dissent to Award No. 2340, Docket CL-2430," and that your Board reconsider and set aside the decision in Award 2340 by dismissing this case account lack of justification.

OPINION OF BOARD: The Claimant was a regularly assigned Signal Maintainer with Thursday assigned as his one day of rest in seven. He was used on Thursday, June 11, 1942, in relief of Leading Signal Maintainer Napper who was on vacation. Napper's assignment provided for pro-rata pay on Thursday, his day off being other than Thursday. The claim is for the difference in the straight time rate and the time and one-half rate which the Claimant declares is due him under Article VI, Section 2 of the current Agreement.

The evidence indicates that the violation of the foregoing rule occurred as alleged. It is the contention of the Carrier that the Vacation Agreement of December 17, 1941, the parties to this dispute being parties to that agreement, controls the disposition of the foregoing claims and requires a finding of a lack of jurisdiction on the part of this Board to determine them, or, if jurisdiction is assumed, a denial of the claim under the terms of the Vacation Agreement.

These issues have been fully determined by our Award No. 3022, Docket SG-2979, adopted this date. For the reasons recited in the Opinion in that Award, we hold that the schedule Agreement controls the disposition of these claims and that an affirmative award is required.

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 employee 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 an affirmative award is authorized by the controlling agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Secretary
ATTEST: H. A. Johnson

Dated at Chicago, Illinois, this 11th day of December, 1945.

DISSENT TO AWARD No. 3024, DOCKET SG-2981

The Award in this case having declared that the issues have been determined by Award No. 3022, Docket SG-2979, the dissent to Award No. 3022 is applicable to the award in this Docket SG-2981.

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