Award No. 3168
Docket No. MW-3208

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOS ANGELES UNION PASSENGER TERMINAL

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. James V. Scruggs, Water Service Mechanic, is entitled to be paid time and one-half rate for eight (8) hours on all Sundays and holidays worked between September 24, 1939 and June 27, 1943, under the provisions of Rule 27 of the Southern Pacific Company (Pacific Lines) Working Agreement, effective September 1, 1926, together with supplemental understandings and interpretations thereof.

EMPLOYES' STATEMENT OF FACTS: Under agreement reached between Southern Pacific Company (Pacific Lines), Union Pacific Railroad Company and the Brotherhood of Maintenance of Way Employes, dated Los Angeles, California, April 13, 1939, employes of the two railroads will, when working in Los Angeles Union Passenger Terminal service, be subject to the provisions of the Southern Pacific Company (Pacific Lines) Working Agreement, dated September 1, 1926, together with supplemental understandings and interpretations thereof.

Mr. James V. Scruggs is a Southern Pacific Company (Pacific Lines) employe holding seniority in the class of Water Service Mechanic and was transferred June 23, 1939, to the Los Angeles Union Passenger Terminal to fill a permanent position in the class of Water Service Mechanic and has been employed at the Terminal ever since.

Mr. Scruggs worked eight (8) hours on Sundays, June 25, July 2, 9, 16, 23 and 30, August 6, 13 and 20, and holiday July 4, 1939, and was paid at the rate of time and one-half for these Sundays and holiday under the provisions of Rule 27. He laid off account sickness after August 20, 1939, and returned to work on or about September 24, 1939.

For work performed Sunday, September 24, 1939, and subsequent Sundays and holidays, the Carrier declined to pay him time and one-half rate.

By letter dated July 24, 1943 (copy shown as Employes' Exhibit "A") Mr. Scruggs addressed a letter to Carrier's Superintendent, Mr. G. E. Donnatin, making claim for time and one-half rate under the provisions of Rule 27 for all Sundays and holidays worked beginning September 24, 1939 and ending June 27, 1943. For all Sunday and holiday work performed by Mr. Scruggs subsequent to June 27, 1943, the Carrier has paid him at the rate of time and one-half.

latest date involved,[3] and furthermore, that said claim was not presented to the Terminal's superintendent until more than one month subsequent to the date Award 2211 was rendered.

Attention is directed to the fact that Award 2211 sustained a specific claim, namely, that on behalf of Water Service Mechanic A. A. Williams, for specific dates; said award did not provide for or contemplate retroactive application to other individuals prior to the date it was rendered.

As previously mentioned, the Terminal, effective with the date Award 2211 was rendered, accepted said award as placing an interpretation on Rule 27 of the current agreement which had not theretofore been applied and has complied with that interpretation subsequent thereto.

That it is not the Division's policy to recognize the validity of claims for dates antedating the date of an award, or awards, when such claims did not and otherwise would not have existed had the award, or awards, not been made, has been established by this Division in a number of awards. In this connection specific reference is made to Awards 696 and 2261 of this Division.

In Award 696, the Division, speaking through Referee Spencer, stated in part:

> ". . . the readjustments in the rates of pay involved should not antedate the period on which the claimants respectively made their claims."

In Award 2261, the Division, speaking through Referee Swaim, stated:

> "If after an award changing the interpretation of a Rule, the Employes were permitted to go back and apply the new interpretation to the support of claims for additional pay for similar work completed and paid for long before the award was rendered, confusion, and uncertainty to the Carrier, and delay in the settlement of disputes would result."

See also Awards 684, 849, 851 and 932, of this Division.

The principle established by the above-mentioned awards is logical and reasonable and has been followed not only by this Division but also by the other Divisions of the National Railroad Adjustment Board.

CONCLUSION

The Terminal asserts that it has conclusively established that the claim in this docket is entirely without basis and, therefore, respectfully submits that it should be denied.

OPINION OF BOARD: Claimant, a Water Service Mechanic, contends that he is entitled to be compensated at time and one-half rate for all Sundays and holidays worked from September 24, 1939 to June 27, 1943. By an agreement appearing in the record, the Southern Pacific Agreement of September 1, 1926, together with supplemental understandings and interpretations thereof, controls the present claim. Rule 27 of that Agreement is in part as follows:

> "Work performed on Sundays and the following legal holidays * * * shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of power houses * * * who are regularly assigned to work on Sundays and holidays, or employes who work in place of those regularly assigned, will be compensated on the same basis as on week days."

Under the rule, Claimant was paid at the time and one-half rate for Sundays and holidays worked from June 25, 1939 to July 4, 1939. Thereafter the Carrier determined that the position was necessary to the continuous operation of the power house and assigned the position on a seven day a week basis. On June 11, 1943, this Board determined by Award 2211 that the identical position involved here, a Water Service Mechanic working in the Los Angeles Union Passenger Terminal, was not necessary to the continuous

[3] See footnote 2.

operation of the power house and found that the occupant of such position was entitled to time and one-half for Sunday and holiday work. The Carrier put the Award into effect and thereafter paid time and one-half for Sunday and holiday work. This claim is for time and one-half for all Sundays and holidays worked before the Board decided that a Water Service Mechanic was not a seven day position. It is the contention of Carrier that the Award cannot be made to apply to Sunday and holiday work performed prior to the decision made in Award 2211.

An examination of Award 2211 reveals that the claim upon which that Award of this Board was based, was presented to the Carrier on March 16, 1940. The Award of this Board in that case was made on June 11, 1943, and the Carrier immediately accepted and placed in effect the interpretation of Rule 27 contained therein and complied with it thereafter. The present claim covers a period from September 24, 1939 to June 27, 1943, and was presented for payment on July 24, 1943. It is the contention of the Carrier that claims antedating an award placing a different interpretation upon a rule than that adopted by the Carrier over a long period of time are invalid because if employes were permitted to go back and apply the new interpretation to similar work completed and paid for long before the Award was rendered, confusion, uncertainty to the Carrier, and delay in the settlement of disputes would result.

It must be borne in mind, however, that it is the province of the Carrier to interpret the rules of the Agreement in the first instance, and while there is merit in barring stale claims, long acquiesced in by the parties, which arise out of subsequent interpretations, it has the effect of barring such claims only that antedated the claim upon which such Award was based. When the claim asserting a new interpretation is made, the Carrier has received notice of the interpretation contended for and it can no longer rely upon the acquiescence of the Organization to the interpretation theretofore given the rule. The duty then falls upon the Carrier to determine the merits of the claimed interpretation. The Award decides the issues as of the date of the claim. We are of the opinion, therefore, that the Carrier can claim immunity from any retroactive application of the Award only for the period antedating the time when the claimed interpretation was first asserted. We, therefore, decide that the present claim should be sustained for all Sundays and holidays worked after March 16, 1940. The claims for overtime pay for Sundays and holidays worked prior to that time are denied.

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 Employes involved in this dispute are respectively carrier and employes 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 Agreement was violated to the extent shown in the Opinion.

AWARD

Claim sustained as to all Sundays and holidays worked subsequent to March 16, 1940, for which time and one-half has not been paid.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1946.