

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Edward F. Carter, Referee

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**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. Clarence R. Jeffery, Water Service Mechanic, is entitled to be paid time and one-half rate for eight (8) hours on all Sundays and holidays worked between December 10, 1939 and December 20, 1942, 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.

**EMPLOYEES' STATEMENT OF FACTS:** Under agreement reached between Southern Pacific Company (Pacific Lines), Union Pacific Railroad Company and the Brotherhood of Maintenance of Way Employees, dated Los Angeles, California, April 13, 1939, employees 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. Clarence R. Jeffery is a Southern Pacific Company (Pacific Lines) employe holding seniority in the class of Water Service Mechanic and was transferred by the Carrier beginning December 10, 1939, and from time to time thereafter until March 21, 1943, to the Los Angeles Union Passenger Terminal to fill temporary vacancies on position of Water Service Mechanic. For work performed December 10, 1939, and all other Sundays and holidays worked up to and including March 21, 1943, Mr. Jeffery was paid at straight time rate of pay, the Carrier declining to pay him time and one-half rate, as provided in Rule 27 of the Agreement effective September 1, 1926.

By letter date July 17, 1943, (copy shown as Employees' Exhibit "A"), Mr. Jeffery 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 December 10, 1939, and ending March 21, 1943.

By letter dated August 2, 1943 (copy shown as Employees' Exhibit "B"), Carrier's Superintendent addressed a letter to Mr. Jeffery advising him claim as submitted in his letter of July 17th, 1943, was denied.

By letter dated November 26, 1943 (copy shown Employees' Exhibit "C"), Mr. D. D. Hart, Division Grievance Chairman, addressed a letter to Carrier's Superintendent, Mr. G. E. Donnatin, submitting on appeal claim of Mr. C. R. Jefferys.

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.

In his letter of January 19, 1944 (Exhibit C), the petitioner's general chairman endeavored to support his position and the payment sought by alleging:

"On several occasions during the period involved in this claim Mr. Jeffery called attention verbally to the Timekeeping Bureau that he was being compensated at straight time rate for Sundays and holidays whereas he was entitled to time and one-half rate. His protests were ignored, however, and he was given no written denial of claims by the Carrier until March 15, 1943, when claim made for time and one-half rate on Sunday, February 28, 1943, was denied in a letter from Mr. G. E. Donnatin."

The general chairman's allegations are not supported by the facts. Prior to February 28, 1943 the claimant did not make any protest, verbally or otherwise, concerning the pro rata payments that were made to him for work performed as water service mechanic at the Terminal on Sundays or holidays prior to that date. While it is true that he currently made claim for payment of time and one-half for service performed on Sundays, February 28 and March 21, 1943, nevertheless, it was not until receipt of his letter dated July 17, 1943 (Exhibit B) that any claim was presented by him for payment of any additional compensation for service performed on Sundays and holidays for dates prior to February 28, 1943. In this connection, it has been established that because of the fact the claims for payment of time and one-half for Sundays February 28 and March 21, 1943 were currently made and consequently, were pending on June 11, 1943, the date Award 2211 was rendered by this Division, said claims were allowed by the superintendent; however, for reasons hereinbefore set forth, the claim for time and one-half for Sundays and holidays during the period December 10, 1939 to December 20, 1942, not having been presented until subsequent to the rendition of said award, was declined and properly so.

**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:** This is a companion case to Docket MW-3208, Award 3168. The result is determinable upon the reasoning of the opinion in that Award. For the reasons there stated the claim is sustained as to all dates claimed after March 16, 1940, and denied as to all dates prior to such date.

**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 current Agreement was violated to the extent shown by 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.