

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

JACKSONVILLE TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1—That the carrier violated rule 47 of the agreement effective November 16, 1944 by improperly working and paying employees enumerated in this dispute.

2—That all baggage and mail separators, tractor drivers, storage car loaders, mail and baggage porters be paid for work performed on calendar Sundays at the rate of time and one half from November 16, 1944 to November 30, 1944, inclusive, from January 1 to February 28, 1945 inclusive, and from October 1 to October 31, 1945 inclusive.

3—That all baggage and mail separators, tractor drivers, storage car loaders, mail and baggage porters be paid at pro-rata rate for the one day each calendar week except Sunday and at time and one half for each Sunday required to lay off between November 16 and November 30, 1944 inclusive, between January 1 and Feb. 28, 1945 inclusive, and between October 1 and October 31, 1945 inclusive.

EMPLOYEES' STATEMENT OF FACTS: The dispute between the parties concerns the application of the provisions of rule 47 of an agreement covering hours of service and working conditions revised and effective as of November 16, 1944 reading:

"Rule 47—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 employees necessary to the continuous operation of the railroad and who are regularly assigned to such service will be assigned to regular day off duty in seven (7), Sunday, if possible, and if required to work on such regular assigned 7th day off duty will be paid at the rate of time and one-half; when such assigned day off is not Sunday, work on Sunday will be paid for at straight time rate.

"When a regularly assigned employee has an assigned relief day other than Sunday and one of the holidays specified in Paragraph 1 of this rule falls on such relief day, the day following will be considered his holiday."

fare to afford him regular periodic rest, and that the claimants concern was to receive an adequate work wage with reasonable labor time requirements and without the necessity of working overtime and, further, that the rules are intended and should be construed and applied by the company to find an approach to and to reach that goal. Then it says, that the disregard of the rest day rule for the sake of extra pay to the claimant would not only remove the force of the rule, but it would tend to its general elimination and would be a backward step, and that the provisions for penalty pay is to discourage working men overtime and on rest days. Further, that regular employees may not demand such work as a matter of right.

In Decision E-223 it says that a furloughed employe made a claim for extra work performed by the regular occupant of a position on his day of rest; that there was no rule at that time giving a furloughed man preference to such work, and that it was extra work that did not arise as part of anyone's assignment for the day. He states that claimants case is not analogous and does not furnish a controlling precedent, nor may it be relied upon even as giving support to the claim. It seems to us that it was correct in deciding that in Decisions E-328 and E-1254 held that claims of that nature should not be allowed, and cited Award 4495 of the First Division and Award 2618 of the Third Division as holding to the same rule. It seems that this Decision has definite bearing on some of the claim in this case.

If this claim is granted, who is entitled to the Award? Under what rule in the Agreement between the Jacksonville Terminal Company and the Brotherhood has there been any violation actually or technically? We believe this claim should be denied, and oral hearing is desired.

OPINION OF BOARD: The Board determines that the Carrier did not comply with Rule 47 and, in view of the facts and circumstances of this case, concludes that claims (1) and (2) should be sustained and claim (3) denied.

The Board understands that subsequent to this claim the parties have put into effect arrangements to take care of conditions satisfactory to both parties.

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 employe involved in this dispute are respectively carrier and employe 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 claim will be sustained to extent indicated in the Opinion.

AWARD

Claim sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1947.