Award No. 4476
Docket No. SG-4299

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

JACKSONVILLE TERMINAL COMPANY

STATEMENT OF CLAIM: 1. That Messrs. Williams, Lomax and Kelley be paid at the time and one-half rate for each Sunday and Holiday a junior employe in point of seniority worked while Williams, Lomax and Kelley were cut off as result of force reduction May 26, 1946.

2. That Messrs. Peacock and Rule be paid at straight time rate one day each week when forced to lay off as result of letter of May 24, 1946.

3. That any employe who works on Sunday be paid at the time and one-half rate for such work.

JOINT STATEMENT OF FACTS: Prior to April 21, 1945, the Signal Department force consisted of the following: Three Leading Maintainers and two Signal Maintainers working seven (7) days per week (*), and paid on a monthly basis under Rule 10 (b), namely

Leading Maintainers:	Williams	— 1st trick
	Lomax	— 1st trick
	Brownlee	— 2nd trick
Signal Maintainers:	Pharis	— 3rd trick
	Rule	— 2nd trick

Two Maintainers and four Assistant Maintainers were working six days per week (**) with Sundays off duty and paid on an hourly basis under Rule 10 (a), namely

Maintainers:	Keffer	— 1st trick
	Kelley	— 1st trick
Asst. Maintainers:	Kirkpatrick	— 1st trick
	Goodchild	— 1st trick
	Peacock	— 1st trick
	Dutton	— 1st trick

Rule 10 reads as follows:

"(a) Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Armistice 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

The Brotherhood presented these claims to the Carrier June 24, 1946, which was the first notice of the claims brought to the attention of the Carrier. In presenting these claims to the Carrier, the Brotherhood did not claim that any employe had requested or desired to exercise his seniority and had been deprived that right by the Carrier. The Brotherhood took the position at that time that the bulletins of May 24th inferred that certain employes could not exercise their seniority but admitted that no employe involved desired to exercise seniority.

It is the opinion of the Carrier that the Brotherhood, in presenting these claims to the Board, is attempting to compel the Carrier to work five positions seven days per week and make payment of time and one-half to any employe who works on Sunday without rules providing for such conditions. It is the position of the Carrier that if the Brotherhood desires such conditions they should proceed to negotiate rules to provide such conditions under provisions of Rule 12 of the agreement.

The first agreement the Jacksonville Terminal Company ever had with the Brotherhood of Railroad Signalmen of America was dated February 1, 1927. The so-called "Sunday Rule" adopted in that agreement is identical with the one in the present agreement, Rule 10 (a). That rule was standard at that time, insofar as we are advised, in every agreement which carried a similar rule. It was then, and has since been, interpreted to mean that for employes required in continuous operation of the Carrier, where the seventh day off was a day other than Sunday, such employe having to work on Sunday to fill out his week would receive pro rata rate for Sunday, and not time and one-half. The whole argument of the Brotherhood in this claim has been based on the fact that our present rule, which was brought forward in the last agreement dated May 1, 1940, does not carry a line in Rule 10 (a) reading:

> "When such assigned day off duty is not Sunday, work on Sunday will be paid at straight time rate."

Our records show that since the adoption of this rule in our first agreement of February 1, 1927 we have had several occasions of several years duration in which relief employes were employed to relieve employes necessary to the continuous operation of the Carrier and all such employes were paid pro rata rate for their work on Sunday, and no question was ever raised about such interpretation until the present time. The Management is informed that a similar question was raised by some Brotherhood and that your Board, or some Referee of your Board, recommended that in the making of future contracts the above mentioned line should be inserted so as to eliminate any element of doubt as to the meaning of the rule. We do not have a new agreement since our last agreement of May 1, 1940, up to these claims and, therefore, there has been no occasion to add it on to our rule as above suggested.

An agreement is in effect between the parties to this dispute bearing an effective date of May 1, 1940 and request is hereby made that it be considered by reference a part of the record in this dispute.

For the reasons hereinabove stated, it is the position of the Carrier that these claims should be denied.

(Exhibit not reproduced.)

OPINION OF BOARD: The record shows that prior to April 21, 1945, the Signal Department force consisted of three Leading Maintainers and two Signal Maintainers compensated on a monthly basis under Rule 10 (b) and two Maintainers and four Assistant Maintainers paid on an hourly basis under Rule 10 (a). The monthly rated employes were working 7 days per week and the hourly rated employes were working a 6 day week with Sunday off. On April 21, 1945, Rule 10 (b) was suspended by negotiation and the monthly rated employes were converted to an hourly rate of pay. The three Leading Maintainers and two Signal Maintainers continued working 7 days a week

and were paid time and one-half for Sunday work. To secure a reduction of force for Sunday work, the Carrier by bulletin effective May 26, 1945, directed three junior Maintainers to work around the clock on Sundays and holidays and the three Leading Maintainers were directed not to work on Sundays and holidays, other Sunday positions being abolished. Two Maintainers, Peacock and Kelley, were directed to work the first and second tricks on Sundays and holidays with any weekday off they chose in accordance with seniority. Maintainer Pharis was assigned the third trick 7 days per week with time and one-half for Sunday work, there being no relief man available for his position. Subsequent to the posting of the bulletin notice on May 24, 1946, G. R. Rule, one of the Leading Maintainers, requested that his relief day be changed from Sunday to Saturday. His request was granted and thereafter he displaced Kelley on Sundays. The two Leading Maintainers, Williams and Lomax, and Signal Maintainer Kelley whom Rule displaced on Sundays, claim time and one-half for each Sunday and holiday that the Sunday and holiday work was performed by employes junior to them. Leading Maintainer Rule and Signal Maintainer Peacock claim one day's pay for the one day each week they were forced to lay off as a result of the posted notice of May 24, 1946. In addition thereto, the Organization asks an interpretation of Rule 10 and a finding that all Sunday work within the Agreement be paid for at the time and one-half rate. We shall discuss these claims in their inverse order.

Rule 10 (a) Agreement effective May 1, 1940, provides:

> "Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Armistice 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 in seven, Sunday if possible, and if required to work on such designated relief day will be paid at the rate of time and one-half."

It is clear from a reading of this rule that the contracted rate of pay for Sunday and holiday work is the time and one-half rate. This rate must be paid for such work except where specific rules provide otherwise, in which event the specific rule will prevail over the general. In the present rule, the portion fixing the rate for Sunday work is followed by a purported exception. It being a part of the Sunday and holiday rule, the purported exception must have been deemed to be pertinent to the subject generally covered by the rule and we will so construe it. The use of the word "except" creates indefiniteness as to what was intended by the portion of the rule which follows it. It does not specifically exclude regularly assigned employes necessary to the continuous operation of the Carrier from the time and one-half rate for Sunday work. Inferentially, it does. The latter part of the rule provides that regularly assigned employes necessary to the continuous operation of the Carrier shall be assigned one day off in seven, Sunday if possible, and if required to work the rest day, they will be paid the time and one-half rate. The inference is that it is only when such employes are required to work Sunday as a rest day that they become entitled to the time and one-half rate. It logically follows that the makers of the rule at the time of its negotiation intended that the Sunday work of regularly assigned employes necessary to the continuous operation of the Carrier was to be paid at the pro rata rate except when the Sunday was a rest day which they were required to work. The use of the word "except" and the inference to be drawn from the language following it, causes us to conclude that the parties did not intend the Sunday rate to apply to regularly assigned employes necessary to the continuous operation of the Carrier. Unless this be true, no exception in fact exists in Rule 10 (a) when one was clearly intended. Thus construed, the claim of the Organization as to claim (3) is without merit.

As to the claims of Rule and Peacock for one day's pay at straight time for each day they were required to lay off because of the notice of the reduc-

tion of force posted on May 24, 1946, we can find no basis for this claim. The Carrier had the right to reduce its forces where the work justified it. It is evident that the positions here involved were not considered 7 day positions necessary to the continuous operation of the Carrier. It is the contention of these employes that they should have been assigned 6 days per week with Sunday off and that, consequently, they were entitled to work the rest day assigned other than Sunday. During the emergent period during and following the war, they worked 7 days a week and were paid time and one-half for Sunday work. When the reduction of force took place, they were assigned 6 days a week with a week day of their choice as a rest day. They being required to relieve the Signal Maintainers on Sunday, they were directed to select a week day for a rest day. We fail to find any agreement provision that prevents such an assignment. The Carrier had the right to make a 6 day assignment and designate the rest day. The rest day was properly assigned and they are in no position to claim pay on their assigned rest day.

As to the claims of Williams, Lomax and Kelley, they present a somewhat different problem. The three senior Maintainers were assigned 7 days per week with Sunday off in accordance with Rule 10 (a). Other employes were assigned to do the Sunday work and were paid time and one-half therefor. It is urged that the Agreement was not followed when the work was not arranged so that these senior Maintainers had the Sunday work and its higher rate of pay. We do not think the Employes can justify this position. The notice of force reduction on Sunday work specifically provided:

> "Employes adversely affected hereby will be accorded the privilege of exercising their seniority for other positions to which they are entitled."

The Organization urges that this provision applied only to employes not assigned by the notice of May 24, 1946. There are two reasons why this position cannot be adopted. In the first place, Rule 16 in part says:

> "When working conditions, or the rates of pay on any position, are materially changed by negotiations or the demands of the service, employes adversely affected thereby will be accorded the privilege of exercising their seniority for other positions to which they are entitled, if qualified to perform the work of such position."

It is evident, therefore, that the Agreement provided for the exercise of seniority even if the notice of force reduction should be construed as the Organization contends. In the second place, the Carrier recognized the right of the senior Maintainers to exercise their seniority when they permitted Rule to supersede Kelley in the performance of the Sunday work, the very act which makes Kelley rather than Rule a Claimant in this portion of the case.

Rule 17 provides that when force is reduced, the senior employes in a class capable of doing the work shall be retained. The Carrier complied with this rule when it retained Williams, Lomax and Rule in the class in which a reduction of force was taking place. Their assignment to 7 day positions necessary to the continuous operation of the Carrier with Sunday off was in accord with Rule 10 (a). It could well be that some senior employe might not desire the Sunday work even at the increased rate of pay. Such an employe is entitled to have the assignments made in accordance with the Agreement. On the other hand, a senior employe who wants the Sunday work can obtain it by the simple expedient of exercising his seniority in accordance with the Agreement, the notice of force reduction and the attitude assumed by the Carrier when it permitted Rule to displace Kelley. We are compelled to say, therefore, that the assignment of the three senior Leading Maintainers around the clock to 7 day positions with Sunday off was in accord with the Agreement. It these senior Maintainers desired the Sunday work, it was open to them by the exercise of their seniority rights in the same manner as Sunday work was obtained by Rule.

The contention made by the Organization that a reduction of force could not be made except by negotiation under Rule 12 is without merit. The action

taken by the Carrier was permitted by the Agreement and involved no change in rules or rates of pay as contemplated by Rule 12.

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 no violation of the Agreement is shown.

AWARD

Claims (1), (2), and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1949.