

Award No. 6334
Docket No. MW-6435

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the effective agreement when it assigned J. T. Thompson, C. L. Thompson and other section and extra gang laborers on the Eastern Division to work on Saturdays and Sundays during July and August, 1951, and failed to compensate them at their respective time and one-half rates of pay;

(2) J. T. Thompson, C. L. Thompson and other employees similarly affected by the violation referred to in part (1) of this claim, be allowed the difference between what they were paid at straight time rates and what they should have been paid at time and one-half rates.

EMPLOYEES' STATEMENT OF FACTS: The Carrier's track forces are assigned to work eight hours daily, Mondays through Fridays, except for designated holidays. Their regularly assigned rest days are Saturdays and Sundays and when they perform service for the Carrier on any assigned rest day or designated holiday they are compensated at time and one-half rates of pay for the hours worked, with a guarantee that they shall not be paid for less than two hours and forty minutes at time and one-half rates for each rest day or holiday on which such work is performed.

Beginning in July of 1951, the Carrier increased its track forces with some employees entering the Carrier's service as regular employees of a section and/or extra gang, during the middle of the work week. These newly hired employees were assigned the same duties, work locations, supervision and assigned work period as the other members of the respective gangs to which they were assigned.

The Carrier then required certain gangs to work on Saturdays and Sundays and compensated the employees who had been in service for the entire assigned work week at their respective time and one-half rates of pay for the work performed on Saturdays and Sundays, but the Carrier refused to similarly compensate the employees who had entered service during the middle of the work week, and continued to compensate them at straight time rates of pay until the second Saturday and/or Sunday on which they performed service.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: It is here alleged that Respondent violated the effective Agreement when it failed to pay compensation at the rate of time and one-half for work performed on Saturdays and Sundays during July and August 1951 to J. T. Thompson, C. L. Thompson and other Section and Extra Gang Laborers.

The Organization asserts that the employees here entered the Carrier's service on Tuesday, Wednesday and Thursday, not as relief employees, but to work with the regular gangs on the same assigned work period of such regular gangs, which was Monday through Friday, with Saturday and Sunday as scheduled rest days; and that in so doing they were entitled to the same work week and resulting time and one-half compensation for work performed on Saturdays and Sundays.

It was pointed out that under Section 1 (i), Article 10, the term "work week" for unassigned employees was defined as a period of seven consecutive days, starting with Monday.

The Respondent takes the position that under the applicable rules of the effective Agreement there is a distinct difference between regularly assigned employees and those who are either extra or assigned in that such extra or unassigned employees have no assigned or designated days of rest and receive time and one-half compensation only when they have worked more than five days or forty hours in a work week.

The rules are clear that regularly assigned employees have a scheduled work week of Monday through Friday, with Saturday and Sunday as rest days, and that all work performed by such assigned employees on their rest days is properly compensable at time and one-half.

Thus we are here confronted with the question of whether or not the employees with which we here concern ourselves belong in the category of regularly assigned employees or are extra unassigned workers.

The Respondent, because of an existing emergency, found it necessary to supplement its regular forces with temporary forces who were terminated when such conditions were corrected.

Article 3, Rule 6, provides that the performance of "temporary" service shall not operate toward the establishment of seniority. Rule 4 of this Article specifies that vacancies or new positions of less than 20 days duration are to be considered as temporary and may be filled without regard to seniority and (Rule 7) are considered regularly assigned only after they have been so employed for 21 or more consecutive days and only then acquire seniority status.

It is admitted by the Organization that the days in question were not days which were a part of any assignment. Section 2 (f) of Article 10 provides:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

We conclude, and so find and hold, that the Claimants here were temporary, unassigned employees who had worked neither more than 40 hours,

nor on more than five days during the week in question, and as such were not entitled to receive time and one-half for the work performed.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1953.