

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that V. W. Saeger, Ticket Seller, be paid the difference between the pro rata rate of his position and time and one-half for work performed on Sunday, August 24, 1941.

There is in evidence an agreement between the parties bearing effective date of February 17, 1936.

EMPLOYES' STATEMENT OF FACTS: V. W. Saeger is the regular incumbent of position of Ticket Seller at the Kansas City Union Station, rate of pay \$6.625 per day, assigned hours 7:40 A. M. to 4:20 P. M., with Wednesday as assigned day of rest. The position is filled on day of rest by a regularly assigned relief man. During the calendar week beginning Sunday, August 24, 1941, Saeger arranged to lay off on Tuesday, August 26, on which date his position was not filled. Wednesday, August 27, was his regular day of rest and the position on that date was filled as usual by the regularly assigned relief man.

Mr. Saeger was paid at the straight time rate of his position, \$6.625, for work performed on Sunday, August 24, 1941, and the Committee filed claim as stated in the above Statement of Claim. There is in existence an Agreement between the parties, having an effective date of February 17, 1936, Rule 43 of which reads as follows:

"SUNDAY AND HOLIDAY WORK.

"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 carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

POSITION OF EMPLOYES: Prior to the week in which this violation occurred and subsequently this position was filled seven days each week, which facts establish it is a position "necessary to the continuous operation

"Rule 34 relates to grievances. Obviously that rule refers to grievances arising out of violation of the terms of the agreement. It cannot in itself be construed to form the basis of a dispute unless the agreement is breached in some other respect."

Rule 34 referred to above is identical with Rule 25.

OPINION OF BOARD: The controlling facts in this case are not in dispute; briefly stated, they are: On Monday, August 25, 1941 Ticket Seller Saeger requested permission to lay off on the next day, Tuesday. This the Carrier permitted, and Saeger's position was not filled on the day he was off duty, it being "blanked" by the Carrier, the other employees in the ticket office performed Saeger's work on that day.

The Ticket Seller position to which Saeger was regularly assigned is a so-called 7-day position, his relief day being Wednesday, and it was filled on Wednesday, August 27, by the regular relief man. Saeger's rate of pay is \$6.625 per day. He was paid at the straight time rate for work on Sunday, August 24, and the claim here is for the rate of time and one-half on that day, under the provisions of Rule No. 43 reading:

"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 carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

Carrier's defense of its position in not allowing Saeger the time and one-half rate for Sunday, August 24, is two-fold and is fully set forth in Carrier's letter of October 3, 1941 addressed to the General Chairman. It is therein shown that while Carrier accepts the interpretation or application this Board has given to the "Sunday and Holiday Work" rule in Award Nos. 314, 336 and 594 and others, yet Carrier seems to argue that a distinction or exception should be made in cases where employees lay off of their own accord; also that previous awards dealt with cases wherein the Carrier declined or refused to fill—otherwise "blanked"—the positions on the "regular day off" of the employee, not on one of the regular work days as is the case here.

The other defense of the Carrier is that Rule 25 bars this case from consideration on its merits, in that complaint was not filed until September 12, 1941, whereas the action of the Carrier which gives rise to the dispute occurred on August 26, 1941, but because of the view we take in this case we deem it unnecessary to pass on this defense.

This referee has taken the time to read all of the awards cited by both sides to this controversy, and is satisfied that the principle contended for by the employees,—that when a seven day position is blanked on the employee's day off he is entitled to time and a half for Sunday and holiday work,—is correct, but on the other hand there is not a single award that has been called to my attention that holds that this principle is applicable in a situation such as the one we have here.

The Board is of the opinion that Rule 43 was not violated in this case.

If the employees want to make Rule 43 cover situations such as the one involved here, we think it only fair that its members negotiate further so that no ambiguity can arise where one of them voluntarily absents himself from his job.

The claim is 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 Carrier has not violated Rule 43 as contended by the petitioner, and we do not consider Rule 25.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1942.