

Award No. 2426
Docket No. CL-2429

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, 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 Mail and Baggage Handlers J. E. Reimer, L. A. Ruckman, Ove Bendsen, Robert Watterson, Frank Staples, J. H. Wright and T. E. Riley be paid for 6 hours at rate of time and one-half their hourly pro rata rate for Sunday, December 7, 1941.

EMPLOYES' STATEMENT OF FACTS: Sunday, December 7, 1941, was the assigned day of rest of the claimants. They were not notified or called to perform work on that day, hence they did not work. The claimants were the seven senior Mail and Baggage Handlers on the 4:00 P. M. to 12:00 Midnight shift having Sunday as assigned day of rest. The pro rata Mail and Baggage Handler rate applying to them was 71-3/8 cents per hour.

On the same day—Sunday, December 7, 1941—seven men, employed temporarily for the Christmas mail rush, were worked and paid 40 cents per hour as follows: (The rate of 40 cents per hour was a disputed rate—see Third Division Award No. 1857, Docket No. CL-1914)

CLOCK NUMBER	NAME	TIME WORKED
1136	(Name not known to Committee)	5 P. M. to 11 P. M.
1168	(Name not known to Committee)	5 P. M. to 11 P. M.
1372	S. B. Pinson	5 P. M. to 11 P. M.
1370	A. N. Kisler	5 P. M. to 11 P. M.
1368	(Name not known to Committee)	5 P. M. to 11 P. M.
1377	Alex Novick	5 P. M. to 11 P. M.
1378	Clarence Willard	5:05 P. M. to 11 P. M.

The carrier employs a force of 300 or more persons annually during part of December to handle the extra Christmas volume of United States Mail passing through its Union Station at Kansas City, Mo., the number hired fluctuating from day to day as the business gradually builds up to a peak which occurs the week before Christmas day, after which date these persons are released.

There was an Agreement in effect between the parties as of the date of this claim, having effective date of February 17, 1936, governing the hours of service and working conditions of employees represented by the Brotherhood, including Mail and Baggage Handlers, from which the following Rules, cited and referred to by the employees in this case, are quoted:

OPINION OF BOARD: It is understood that in general after employing all the regular force assigned to work on a certain day and after using all available extra board employees, the Carrier, if it still needs additional employees may—(1) hire additional help, which will go on the extra board, (2) call regular employees under Rule 38 to work on their assigned rest days, or (3) work employees overtime under Rule 37.

However, in view of the exceptional need for additional men to handle mail and baggage during the Christmas rush in such numbers and under such conditions as make it inexpedient to add the men to the extra board with seniority rights, it has been agreed by the Organization and the Carrier that such seniority rights shall not apply to the special force so employed. The arrangement does not purport to change in any way the rights of the regular force of the railroad, but merely limits the rights of the special Christmas rush force by excluding them from the seniority provisions. It is also provided in the final paragraph of Rule 30, relating to employees "Reporting and Not Used," that "this rule does not apply to employees who are engaged to take care of fluctuating or temporarily increased work which cannot be handled by the regular forces."

Since the right of the regular force to overtime work is obviously subject to the seniority rules, as this Division has correctly held in Award 2341, and since the obvious purpose of the special arrangement concerning the extra Christmas mail and baggage handlers is to supplement the regular force by the special employees, and not to supplant or to limit the rights of the regular employees under the Agreement, it necessarily follows that the latter have the same seniority right to overtime work during the Christmas rush as at other times of the year, and that the claim must be allowed.

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 there has been a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1943.

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This Opinion holds that since the right of the regular force to overtime work is obviously subject to the seniority rules, it follows that the regular employees have the same seniority right to overtime work during the Christmas rush as at other times of the year.

The Agreement does not imply or expressly give to claimants the exclusive right to perform, outside of their assigned tours of duty, the work they perform during their assignments, and does not prohibit the use of extra men on extra work or temporary vacancies, nor does it provide such work shall be performed by employees regularly assigned to such class of work.

The claimants here involved all held regular assignments with Sunday as their day of rest. When they worked their regularly assigned hours and days and received their regular pay, that was all the Agreement guaranteed.

/s/ R. H. Allison
/s/ R. F. Ray
/s/ C. C. Cook
/s/ A. H. Jones
/s/ C. P. Dugan