

Award No. 2514
Docket No. MW-2533

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO & WESTERN INDIANA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(a) That James Tenuto, Track Walker, Section No. 1, and other employees, assigned to less than eight hours on Sundays and holidays, be paid at the rate of time and one-half;

(b) That James Tenuto, et al., be paid the difference between what they received on the straight-time basis at pro rata rate and what they are entitled to at the penalty rate, retroactive to May 7, 1942.

EMPLOYEES' STATEMENT OF FACTS: Since May 7, 1942, James Tenuto and other sectionmen, claimants in this dispute, have been required by the Carrier to patrol track on Sundays and holidays.

This service and assignment on Sundays and holidays consumes usually four, five or six hours, for which the claimants have been compensated by the Carrier at pro rata rate.

The claimants, whose regular classification on week days is that of sectionmen, and whose time which is not consumed in walking track on week days is devoted to the performance of service as sectionmen in the gang, are hourly rated employees and, on week days render service and are compensated for eight hours, whereas for this Sunday and holiday service they have been compensated only for the hours consumed in walking track and at pro rata rate.

There is an agreement in effect between the parties governing the hours of service and working conditions as well as the rates of pay of the Carrier's maintenance of way employees, which agreement bears effective date of April 15, 1940, and is hereby made a part of this dispute.

POSITION OF EMPLOYEES: The Employees cannot agree with the position the Carrier has taken in this dispute that Rule 1 (b) supports the Carrier's payment to the claimants of straight time for work performed on Sundays. The rule reads:

"When less than eight (8) hours are worked for convenience of employees, or when regularly assigned for service of less than eight (8) hours on Sundays and holidays, only actual hours worked or held on duty will be paid for except as provided in Rule 5."

The rule provides that "When less than eight (8) hours are worked for convenience of employees, OR WHEN REGULARLY ASSIGNED FOR SERVICE OF LESS THAN EIGHT (8) HOURS ON SUNDAYS and holidays,

The provisions of the contract between the Chicago & Western Indiana Railroad Company and the Brotherhood of Maintenance of Way is decidedly different from the case then under consideration by the United States Railroad Labor Board when it rendered its Interpretation No. 2. This contract specifically contains a provision covering regular assignments of less than eight hours on Sundays and holidays, the ordinary length of assignment on week days, and the manner of payment for such regular assignment of less than eight hours. Further, this contract was made many years after the decision of the United States Railway Labor Board referred to and after many lengthy conferences. The parties understood that these regular track walker assignments on Sundays and holidays were to be paid at the straight time wage rates for the time actually worked, and no question was raised concerning such rate of payment until May 7, 1942.

It is the position of the Chicago & Western Indiana Railroad Company that the contract between the parties is clear and definite that these assignments are to be paid for at straight time wage rates for the time actually worked and that any other interpretation would be contrary to the terms of the contract.

OPINION OF BOARD: Claimants are regularly assigned sectionmen and track walkers seven days a week. Week days their assignments are for eight hours; Sundays and holidays not more than four and/or five. They claim time and one-half for Sunday and holiday work under Rule 1, Rule 1 (b) and Rule 3 of the current agreement which became effective January 1, 1940.

They rest their case largely, if not entirely upon Interpretation No. 2 to Decision No. 2687 of United States Railroad Labor Board. The rule there construed, so far as pertinent, provided:

"Work performed on Sundays and . . . legal holidays . . . shall be paid at the rate of time and one-half, **except that employees . . . who are regularly assigned to work on Sundays and holidays . . . will be compensated on the same basis as on week days.**" (Emphasis added)

The Railroad Labor Board held that:

"The term 'regularly assigned to work on Sundays and holidays' . . . was intended to cover only employees **regularly assigned for the full number of hours, representing their regular week-day assignment.**" (Emphasis added)

In other words, under the decision, an employee who worked a regular assignment on Sundays and holidays which was shorter than his week-day assignment, was entitled to compensation under the Sunday-holiday rule providing for pay at the rate of time and one-half.

If the applicable rules of the current agreement were the same the decision would support the claimants' position. But they are not. Evidently they were deliberately designed to meet the exception made by the Railroad Labor Board in Interpretation No. 2 to Decision No. 2687.

The applicable rules of the current agreement are Rules 1 (b) and Rule 3. Rule 1 (b), so far as pertinent, provides:

"When less than eight (8) hours are worked for convenience of employees, or when **regularly assigned for service of less than eight (8) hours on Sundays and Holidays, only actual hours worked or held on duty will be paid for** except as provided in Rule 5." (Emphasis added)

(Rule 5 is the Call Rule and has no bearing on the controversy.)

Rule 3, so far as pertinent, provides:

"Work performed on Sundays and . . . legal holidays shall be paid for at the rate of time and one-half, **except employees who are regu-**

larly assigned to work on Sundays and holidays . . . will be compensated on the same basis as on the week days." (Emphasis added.)

Standing alone Rule 3 might be subject to the same construction as placed upon the analogous rule by the Railroad Labor Board in Interpretation No. 2 to Decision No. 2687. But in the light of Rule 1 (b) such a construction would amount to nothing short of a modification of the agreement by a decision of this Board. Clearly, the rules provide for payment of employees, regularly assigned to Sunday and holiday service, on the basis of their week day compensation even though their Sunday and holiday assignment is for less than eight hours.

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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 24th day of March, 1944.