Award No. 2537
Docket No. CL-2600

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, 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 John Vogel be paid:

(a) Eight hours' pay at the rate of 58½ cents per hour for Friday, April 16, 1943; and

(b) the difference between pro rata of 58½ cents paid and the overtime rate for 8 hours' work performed Sunday, April 18, 1943.

EMPLOYES' STATEMENT OF FACTS: As of the date of the claim, John Vogel was regularly assigned to position of Janitor not necessary to the continuous operation of the railroad; assigned hours of service, 7:00 A. M. to 3:30 P. M., with Sunday as assigned rest day.

As of the date of the claim, M. Brendel was regularly assigned to position of Janitor, identified or designated by the Carrier as a position necessary to the continuous operation of the railroad; assigned hours, 7:00 A. M. to 3:30 P. M., with Friday as assigned rest day.

The rate of pay of both positions was 58½ cents per hour.

M. Brendel was on assigned vacation for the period April 13, (Tuesday) 1943, to April 18, (Sunday) 1943, inclusive.

John Vogel was required by the Carrier to fill the assignment of M. Brendel while the latter was on vacation. He was required to lay off without pay Friday, April 16th (Brendel's assigned rest day) and was required to work Sunday, April 18th at straight time rate which day was his (Vogel's) regular assigned rest day.

Claim has been filed with the Carrier and handled on appeal to the highest officer of the Company designated to handle such matters and claim has been denied.

POSITION OF EMPLOYES: It is the position of the Employes that the Carrier violated the provisions of two Rules of an Agreement between the parties dated October 1, 1942, reading as follows:

"RULE 40 ABSORBING OVERTIME

"Employes will not be required to suspend work during regular hours to absorb overtime."

The opinion given in the illustration quoted above decided the question of the payment of punitive payments to employes involved in the application of the VACATION AGREEMENT OF DECEMBER 17, 1941. Therefore, in the event that this Board assumes jurisdiction over disputes involving the VACATION AGREEMENT OF DECEMBER 17, 1941, the Carrier contends that Article 12 (a) of the VACATION AGREEMENT OF DECEMBER 17, 1941, and Referee Morse's decision quoted above are controlling in the principle involved in this case.

OPINION OF BOARD: Vogel was regularly assigned to a six-day position of janitor with Sunday off. Brendel was regularly assigned to a seven-day position (designated as "necessary to continuous operation") with Friday off. Their hours were the same—7:00 A. M. to 3:30 P. M. Under the Sunday and holiday rule Brendel was paid at straight time rate for Sunday work. He was on vacation Tuesday, April 13, 1943 to Monday, April 19, 1943, inclusive.

On Tuesday, April 13th, Vogel was assigned to Brendel's position. He was required to take Brendel's day off—Friday; and he was paid at straight time rate for work on Sunday, April 18th. He claims pay at straight time rate for Friday when he was required to lay off; and for time and one-half for Sunday work.

The applicable rules, so far as pertinent read:

"RULE 40—ABSORBING OVERTIME

"Employes will not be required to suspend work during regular hours to absorb overtime."

"RULE 43—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 employes 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."

These are standard rules promulgated by the United States Railroad Labor Board. Interpreting these rules in Decision No. 2853, that Board held:

(1) That an employe who is regularly assigned to a regular position with Sundays off should be paid at the rate of time and one-half for work performed on Sundays while working temporarily in place of another employe whose relief day is other than Sunday.

(2) That an employe who is regularly assigned to a regular position with Sundays off should not be required to take off relief day (other than Sunday) of employe whose position he is filling temporarily.

(3) That such employe should be permitted to work that day on his regular assignment.

We think this decision of the United States Railroad Labor Board should be, and is, conclusive on the merits of this dispute. By implication, at least, the carrier concedes the interpretation is conclusive, if applicable. For its de-

fense is that the dispute arises from its application of the Vacation Agreement of December 17, 1941, and should have been referred to the Committee provided for in Article 14 of that agreement.

This defense has been raised twice before in disputes between these same parties involving their agreement. See Awards Nos. 2340, 2484. In each instance this Division held that the Vacation Agreement had no bearing on the issues. After a careful analysis of the carrier's position in Award No. 2340, the referee said:

> "It seems clear, therefore, that all rules agreements remain as before the execution of the Vacation Agreement, and that, in the absence of a negotiated change, they are to be enforced according to their terms."

We adhere to this view and, following Decision 2853 of the United States Railroad Labor Board, hold the instant claim valid.

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 violated the agreement.

AWARD

Claim sustained in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1944.