

Award No. 3025

Docket No. SG-2982

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
KANSAS CITY TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM: (a) Claim that D. P. Brewer, whose regular assignment was that of a signalman in the Construction Forces seniority district, be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Sunday, June 7, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, first shift, tower 5, taking the place of W. Honeyman, the employee regularly assigned to such position. Amount claimed \$3.80.

(b) Claim that D. P. Brewer be paid the difference between the straight time rate of 95 cents per hour and time and one-half rate for all services rendered on Sunday, September 20, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, first shift, tower 5, taking the place of W. Honeyman, the employee regularly assigned to such position. Amount claimed \$3.80.

(c) Claim that D. P. Brewer be paid one day's pay of eight hours at 95 cents per hour for time lost on Thursday, June 11, 1942, which was his assigned work day on his regular assignment in Construction Forces. Brewer was required by the management to fill the position of signal maintainer, first shift, tower 5, from June 7 to 13, 1942, inclusive, taking the place of W. Honeyman, the employee regularly assigned to such position. Amount claimed \$7.60.

EMPLOYEES' STATEMENT OF FACTS: D. P. Brewer was regularly assigned in construction forces with a starting time of not earlier than 7:00 A. M. nor later than 8:00 A. M., with Sundays and the seven (7) specified holidays as assigned days off duty. Construction forces are defined in Article I, Section 1 (b), which reads:

"Construction Forces covers that class of employees filling the regular established six (6) day a week assignment and work periods of one shift a day. Sunday and certain holidays as hereinafter named not considered regular assignments for this class of employees. Six Day Assigned Forces will perform work herein specified at any point as may be necessary to meet the requirements of the service."

The instant claims cover working periods when Brewer was required by the management to fill regularly assigned maintenance force positions, on a separate seniority district, and when required at various times between June 7 and September 24, 1942, to work outside his regularly assigned hours (two Sundays), and when he was deprived of working one of his regularly assigned days, namely, Thursday, June 11, 1942.

additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement."

In addition to the foregoing it is the Carrier's request that your Honorable Board review the written opinion of the Carrier members of your Board on this subject, in their "Dissent to Award No. 2340, Docket CL-2430," and that your Board reconsider and set aside the decision in Award 2340 by dismissing this case account lack of jurisdiction.

OPINION OF BOARD: The Claimant was a regularly assigned Signalman in the construction forces with Sundays and holidays as assigned days off duty. The claim consists of three alleged violations of the Schedule Agreement. Items (a) and (b) are based on alleged violations of Article VI, Section 2, which states the rule applicable when an employee is required to work Sundays or holidays, his assigned days off duty. On these two items, the claim is for the difference between the straight time rate and the time and one-half rate for the Sundays worked which are specified in the claim. Item (c) is based on an alleged violation of Article VI, Section 5, providing that employees will not be required to suspend work during regular work periods to absorb overtime. On the day for which claim is made, Claimant was required to work another position during the hours of Claimant's regular assignment. The claim is for a day's pay at the pro rata rate of his regular position. The record shows that the foregoing rules were violated as alleged.

The evidence shows that the work performed under Items (a) and (b) and the work of which Claimant was deprived under Item (c) grew out of the granting of vacations to the regular occupants of the positions worked. It is the contention of Carrier that the Vacation Agreement of December 17, 1941, the parties to this dispute being parties to that agreement, controls the disposition of the foregoing claims and requires a finding of a lack of jurisdiction on the part of this Board to determine them, or, if jurisdiction is assumed, a denial of the claim under the terms of the Vacation Agreement. While Item (c) presents a claim involving the violation of a different rule of the schedule Agreement than was involved in Award No. 3022, Docket SG-2979, nevertheless it is governed by the same reasoning as is contained in that Award.

For the reasons announced in Award No. 3022, we hold that the schedule Agreement controls the disposition of these claims and that an affirmative award is required.

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 an affirmative award is authorized by the controlling agreement.

AWARD.

Claims (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of December, 1945.

DISSENT TO AWARD No. 3025, DOCKET SG-2982

The Award in this case having declared that the issues have been determined by Award No. 3022, Docket SG-2979, the dissent to Award No. 3022 is applicable to the award in this Docket SG-2982.

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