

Award No. 3435
Docket No. MW-3186

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

(Berryman Henwood, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that under the application of Schedule Rule 7-3 all section laborers required to walk or patrol track on Sundays and holidays shall be paid at the rate of time and one-half for such Sunday and holiday work, retroactive to December 16, 1944.

EMPLOYEES' STATEMENT OF FACTS: For some time prior to December 16, 1944 the Carrier has required one section laborer on all of its main line sections, including the Shreveport branch, on the Northern Division to walk or patrol track on Sundays and holidays for which service such section laborer has been paid at pro rata rate.

The Agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As stated in Employees' Statement of Facts, for some time prior to December 16, 1944 the Carrier has required one section laborer on each of its main line sections, including the Shreveport branch, on the Northern Division to walk or patrol track on Sundays and holidays for which service these laborers were and are now paid at pro rata rate. We maintain that under the application of Schedule Rule 7-3, Revised, effective December 16, 1944, regularly assigned section laborers are entitled to payment at the rate of time and one-half for any and all services performed on Sundays and holidays. Revised Rule 7-3 effective December 16, 1944 reads:

"7-3. SUNDAY AND HOLIDAY WORK.

(A) Except as otherwise provided in this agreement, employees who are required to work on Sundays and the following holidays; i. e., New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that when any of the above holidays fall on Sunday, the day observed by the State or Nation or by Proclamation shall be considered the holiday) shall be compensated therefor at the rate of time and one-half.

Payroll classifications of Track Sub-Department employes, as listed in Rule 8-15 covering rates of pay, are as follows:

Extra Gangs

Maintenance Foremen
Ballast Foremen
Rail Foremen
Tile Gang Foremen
Ass't. Ex. Gang Foremen
Extra Gang Laborers

Section and Yards

Yard Foremen
Section Foremen
Assistant Yard Foremen
Assistant Section Foremen
Yard Section Laborers
Section Laborers

Track Apprentices

Thus, the agreement provides for "section laborers" instead of track walkers, lamp tenders, motor car operators, switch oilers, etc. There are few instances in which section laborers are assigned exclusively to one kind of work. Usually they perform several kinds of work during the day and during the week. It is common practice to assign them to work part of the time with the gang and part of the time on work other than that which the gang is performing. That is, a section laborer may be assigned to clean station grounds part of each day, or on certain days of the week. He may be assigned to clean and oil switches in a certain day of the week. But, so long as the duties assigned are those of a section laborer, the agreement does not limit the duties which shall constitute a "position." It is left to the Carrier to decide the make-up of a "position."

Section laborers have been assigned for years at certain points to work in the gang six days and walk track on Sunday. They have been paid straight time rates for their work on Sunday under Rule 7-3 in effect prior to December 16, 1944, quoted in Statement of Facts, on the basis that they were "necessary employes * * * regularly assigned to work on Sundays and holidays."

Thus, the fact is clear that the positions were as of October 21, 1944, "regularly established on a seven-day calendar basis" and the employes filling the positions are properly paid at pro rata rates.

The rules do not support the Employees' claim for time and one-half rate, and the Carrier respectfully requests that claim be denied.

OPINION OF BOARD: The Organization here claims that regularly assigned section laborers who work with the members of a section crew during week days in the performance of ordinary track maintenance, and who walk or patrol tracks on Sundays and holidays, should be paid for such Sunday and holiday work under Paragraph (A) of Rule 7-3. The Carrier contends that Rule 7-3(B) permits an employee who was the incumbent of a position "regularly established on a seven-day calendar basis" as of October 21, 1944, to continue working seven days a week at pro rata rate so long as he occupies the same position.

The question then is: Are these men filling positions regularly established on a seven-day calendar basis?

The Carrier has answered the question. On page 4 of its reply to the ex parte submission the Carrier states:

"Consequently neither the laborer who walks track seven days a week, nor the one who works in a gang six days and walks track one day each week is assigned by bulletin. Usually, the senior man in the gang who desires such work is assigned."

On page 1 of its "Statement in Rebuttal", filed here May 6, 1946, the Carrier states:

"As stated on page 4 of Carrier's submission, laborer positions are not assigned by bulletin, but in making assignments to walk track the senior man in the gang who desires such work is usually assigned."

Obviously, the "such work" in the quoted sentences refers to the walking-track work. Just as obviously, the assignment to walk track one day a week is a separate and distinct act from the assignment to work in a gang six days a week. Of necessity, it must be a separate assignment for the seventh day, inasmuch as the senior man on the gang may have the assignment if he desires it. The Carrier further states on page 1 of its "Answer to Argument", filed here in June 6, 1946:

"They have an assignment for seven days a week which requires that they work with remainder of gang six days and walk track on Sunday. This means that the entire gang goes over the track daily six days a week and one man goes over it on Sunday; his assignment being for seven days and the other men for six days a week."

It seems clear from these statements that the entire gang are assigned to work six days a week, and that some one man of the gang is separately assigned to walk track on the seventh day. This means that the men involved in this claim work a six-day and a one-day assignment, or a total of seven days on two assignments, and not on one assignment "established on a seven day calendar basis". This conclusion is sustained by Employes' Exhibit "A" which shows the "Employes regularly assigned to work Sundays and holidays under the provisions of Rule 7-3". No reference is there made to a seven-day assignment, but to a "Sundays and holidays" assignment. It further shows that men in many instances are used alternately, which obviously requires designation or assignment for those days. It necessarily follows that the men whose claim is here presented come within the provisions of Rule 7-3 (A) and not within the exception of Rule 7-3 (B).

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 parties waived oral hearing thereon;

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 section laborers whose claim is here involved are entitled to pay at the rate of time and one-half for Sunday and holiday work, as provided by Rule 7-3(A).

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 February, 1947.