

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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

(a) The carrier violated and continues to violate the rules of the working agreement between the above named parties dated April 1, 1943 and special agreement signed September 18, 1944, by failing and refusing to apply provisions thereof to E. E. Tims, Bill Clerk-Ticket Clerk at Pittsburg, Kansas, and other employees similarly affected.

(b) That said E. E. Tims and other employees affected shall be treated with, worked and compensated in accordance with rules of said agreements retroactive to July 14, 1946.

EMPLOYEE'S STATEMENT OF FACTS: The parties to this dispute entered into an agreement effective April 1, 1943 and special agreement dated September 18, 1944, covering rates of pay, hours of service, and working conditions of employees of the carrier as stipulated in rule 1, thereof.

The carrier has failed and refused to apply all of the rules of these agreements to E. E. Tims and others similarly affected.

Previous to July 14, 1946 said E. E. Tims and others affected were assigned and worked seven days per week, eight hours per day and were paid time and one-half time for Sunday and Holiday work as per the provisions of the Special Agreement signed September 18, 1944.

Effective as of Sunday July 14, 1946, said E. E. Tims and others affected had their assignment changed from a seven to six day to work daily except Sunday. Coincident with said change E. E. Tims was instructed to report regularly on Sundays and Holidays for two two-hour calls—one at 11:00 A.M. and one at 5:00 P.M.. Others affected were instructed likewise with the exception of reporting hours.

The carrier has failed and refused to comply with the request of the organization that said E. E. Tims and others affected be paid in accordance with said rules.

POSITION OF EMPLOYEES: Rules cited in claim read as follows:

RULE 1. "These rules shall govern the hours of service and working conditions of all that class of clerical, office, station and

in the agreement, but no such provision is contained therein nor is any specific mention whatever made regarding such positions. The only work required of this position on Sundays and holidays is that of servicing Trains 1 and 2. Clearly, the Carrier has the right to change the assignment of any seven-day position to an assignment of six days per week, and the incumbent has the right under Section (b) of Rule 19, thereupon to exercise his seniority elsewhere.

Copies of correspondence exchanged in connection with this claim are attached hereto as Exhibit "B" and made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee presents this claim in behalf of E. E. Tims, a Bill Clerk-Ticket Clerk, and all other employees similarly affected. It claims that the Carrier violated the rules of their Agreement effective April 1, 1943, and a Special Agreement signed September 18, 1944, and asks that Tims and the others affected be treated with, worked and compensated in accordance with the rules thereof, retroactive to July 14, 1946.

Prior to July 14, 1946, Tims and the others were working seven days per week, eight hours per day, and being paid therefor at the rate of time and one-half for all Sundays and holidays. This was in accordance with the terms of Rule 41 in the Special Agreement dated September 18, 1944. By Bulletin No. 63 dated July 11, 1946, and effective as of July 14, 1946, Tims and others had their assignments changed from a seven to a six day basis, with Sunday as their day off. Tims and the others were thereafter regularly called on Sundays. Tims was regularly called to report on Sundays at 11 A. M. and 5 P. M. for two hour periods in order to make available his services for Trains 1 and 2. He would be called on Saturday night to meet the two trains on Sunday at the time as has hereinbefore been set forth.

The first question that arises is: Did the Carrier have the right to change the employees' assignments from a seven to a six day basis? We find nothing in the Agreement that would prevent the Carrier from so doing and, in fact, the provisions in Rules 19 (b) and 62 (a) clearly indicate that such was within the contemplation of the parties. In the absence of any rule prohibiting the Carrier from so doing, we find that it had the right to do so. Thus, after the change, Tims and the others no longer had a regular assignment on Sundays.

Was Rule 37 of the parties' effective Agreement, being the "Call" Rule, thereafter applicable to these parties?

This Rule is as follows:

"Except as otherwise provided in this agreement, employees notified or called to perform work not continuous with, before or after, the regular work period shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

In the parties' Agreement effective as of June 16, 1937 this rule was No. 45 and read as follows:

"Except as provided in Rule 46, employees notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays shall be allowed a minimum of three (3) hours for two (2) hours' work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

It will be noticed that the words underlined in Rule 45 have been dropped from the rule as it appears in the Agreement effective as of April 1, 1943.

The Committee contends the effect of dropping this language is that no call for overtime can be made for Sundays or holidays, except to perform work not continuous with, before or after the regular work period on such Sunday or holiday. The words "or on Sundays and specified holidays," as they appeared in Rule 45, neither added to nor limited the effect thereof, but simply stated what would have been the construction thereof without it having been included therein and as it is now written. If the rule is to be construed as the Committee contends, then it would have to be written with that exception, for exceptions to general rules will not be granted unless expressly provided for. We find that the Carrier has not violated the rules of the Agreements.

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 the Carrier has not violated the rules of the Agreements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of February, 1948.