

Award No. 8891

Docket No. CL-10471

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY (Dallas, Texas)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) The Carrier (The Union Terminal Company, Dallas, Texas) violated and continues to violate its several agreements with the Organization when on June 24, 1957, it dismissed and separated from its service John H. Mackey, Baggage Porter, on the charge he had violated the extra board agreement by his failure to report for service thereunder on Monday morning, June 24, 1957; and,

(2) The Union Terminal Company violated the rules of the agreement when it failed and refused to recognize that by virtue of said employee's having worked a vacation period, he was entitled to the same rest days as would have been the regular assigned employee; and,

(3) The Union Terminal Company failed and refused to accord the said Mackey an investigation as provided in the agreement rules, for the purpose of determining the facts in the case; and,

(4) As the result of the Carrier's mishandling of the situation, the said John H. Mackey shall be reinstated to the service of the Union Terminal Company (Dallas, Texas), with seniority rights unimpaired; that he shall be paid for all time lost, including vacation time denied him; and that his employment condition shall be

such as though he had never been separated from the service of the said The Union Terminal Company.

OPINION OF BOARD: The employe herein named, was employed by Carrier as Baggage Porter, and held assignment as extra board employe. On June 12, 1957, the employe worked Porter Position No. 33, filling such position as regularly assigned for relief of another employe during vacation period. This position was regularly assigned Wednesday through Sunday with rest days Monday and Tuesday. The Claimant worked this regular assignment June 12—16, 1957 and had his two rest days Monday and Tuesday, June 17-18. He then worked the assignment June 19—23, and following the Monday and Tuesday rest days of the position, reported back to his regular assignment on the Extra Board and was notified he had been taken out of service by Carrier for failure to report to the Extra Board on Monday, June 24, 1957, under Section 7, of the Agreement relating to Extra Boards.

Rule No. 12, of the Extra Board Agreement before us, provides that employes assigned from the Extra Board for vacation relief positions, shall be withdrawn from the Extra Board, and that such employes shall be regarded as regularly assigned. Carrier contends the employe should have returned to his Extra Board assignment, when the vacation relief position ended on June 23rd. However, this employe, filling a regular assignment, was entitled to his two rest days, under the Forty Hour Week Agreement, and he being entitled to all the benefits accruing him while regularly assigned, was deprived by Carrier of such benefits, and Carrier violates such agreement by its action.

The employe relies on Article II, Section 1 of the Forty Hour Week Agreement, see Note. Such provision pertains to the service, duties or operations to be performed the specified number of days per week, and not the work week of individual employes.

We hold Carrier wrongfully discharged the employe from its service under provisions of Rule No. 7 of Extra Board Agreement, for the reason that the employe was holding a regular assignment, and was not to be considered as available on the Extra Board until June 26, 1957, following the two rest days allowed him under his regular assignment, and the Forty Hour Week Agreement.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 wrongfully discharged the employe from service and the claim should be sustained.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 20th day of July, 1959.