Award No. 13199
Docket No. MW-13306

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TENNESSEE CENTRAL RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to compensate the claimants (identified in the Note appended hereto) at time and one-half rates for services performed on October 22 and/or 23, 1960.

(2) Each of the claimants be paid the difference between what they were paid at straight time rates and what they should have been paid at time and one-half rates for the services referred to in Part (1) of this claim.

NOTE: **Claimants for October 23, 1960 only are:**

Kelly Phillips
E. C. Hood
J. T. Mahaney
Dock Bohanan
Leo Phillips
Woodrow Herd
Luna Oaks
Ernest Gamble
Robert Bates
Charlie Massey
Charlie White
F. C. Willoughby
Dewitt Robertson
Joe Crudup
C. A. Searcy
James P. Vaughn
Albert Strawther

Claimants for both October 22 and 23, 1960 are:

John R. Williams
L. J. Green
Walter Ryon
Walter Keys
G. C. Hawkins, Jr.
Normie Bennett
Billy Ray Phillips
Armstrong Herd
Leonard Williams
Baxter Herd
Lillard Wallace

EMPLOYES' STATEMENT OF FACTS: The Claimants are regularly assigned employes who are regularly assigned to five-day positions, with a work

in question should be accepted, the rules of the agreement would still deny their claim to time and one-half for the said Saturday and Sunday work.

Incidentally, overtime for Sunday work as such was eliminated by the 40-hour agreement of March 19, 1949, which elimination is reflected by revised Rule 27(a) to conform to the rules of the said 40-hour week agreement, and overtime has never been paid for Saturday work as such.

A claim predicated upon the contention here urged by Employes was denied by your Award 5732, M. of W. & C.M.STP&P, stating in part:

> "The Claimant at the time in question was a furloughed employe and as such had no regular assignment. On each of the days in question, March 11, 12 and 25, the Claimant worked 8 hours. He had not worked 5 days nor a total of 40 hours during the work week."

And followed in your Award 6334, M. of W. and M.K.T., also stating in part:

> "We conclude, and so find and hold, that the Claimants here were temporary, unassigned employes who had worked neither more than 40 hours, nor on more than five days during the week in question, and as such were not entitled to receive time and one-half for the work performed."

Carrier submits that claimant employes have already been properly compensated under the rules of the agreement for their work on the Saturday and/or Sunday in question, and respectfully requests that your Honorable Board deny the claim.

(Exhibits not reproduced).

OPINION OF BOARD: Claimants are track laborers who had worked on jobs scheduled Monday through Friday with Saturday and Sunday as the designated days of rest for their assignment. On the weekend of October 22-23, 1960 the Carrier was required to relocate a section of track on Mile 78 east of Nashville to make way for highway construction. It scheduled the Claimants for this work. All had completed their previous tour of duty on Friday October 14, 1960. Two had worked 8 hours on October 19 and three had worked 8 hours on October 21. Luna Oaks had worked 8 hours each day October 17 to 21, inclusive. Eleven Claimants worked eight hours on Saturday October 22 and were paid at straight time rates. All Claimants worked in excess of eight hours on Sunday October 23, With the exception of Luna Oaks they received straight time for the first eight hours worked, and time and one-half for all hours worked beyond eight. Luna Oaks was paid at time and one-half for all 14 hours worked by him on Sunday.

The Employes contend that the Claimants should have been paid at time and one-half for all hours worked on the Saturday and/or Sunday in question. It asserts that the Companys practice has been to consider temporary periods out of work as "lay offs" without abolishment of positions and with maintenance of the employes regular assignment; that this Board in Award No. 12831 has ruled that when no notice of force reduction under Article IV of the Agreement is given to the employes they are to be considered as regularly assigned employes; and that since they were regularly scheduled employes they are entitled to overtime for all work performed on their designated rest days just as if they had been off ill during the regularly assigned work-week preceding these rest days.

The Carrier argues that these employes were furloughed and that when recalled were properly paid at straight time rates for the first eight hours worked on each day, since, except for Luna Oaks, they had not worked more than five days in the same workweek.

The Carrier acknowledges that all Claimants had been regularly assigned track laborers prior to their having been "laid off" on October 14, 1960. Its argument that they lost this status at that time must be dismissed in the light of Award No. 12831 wherein Referee Hall held that failure to give the proper 96 hours notice required by Article IV of the parties' Agreement dated October 7, 1959 precludes their being considered as properly laid off.

Accordingly it must be held that the Claimants were still on regular assignment when called to work on the weekend in dispute, and under the terms of Rule 27 are entitled to pay at the rate of time and one-half for all work performed on those dates. Inasmuch as they had been paid at time and one-half for the work performed beyond eight hours on Sunday, October 23, 1960, they are entitled to four hours pay for the straight time work performed on Saturday and/or Sunday. Since the evidence indicates that Luna Oaks had already received proper compensation because of having worked throughout the preceding week, the compensation awarded herein shall not extend to him.

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 Agreement was violated except in the case of Luna Oaks.

AWARD

Claim sustained except in the case of Luna Oaks.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1965.