Award No. 2325
Docket No. 2299
2-KCS-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Kansas City Southern Railway Company improperly denied Machinists Roy J. Brown, Talmage Cobb, J. H. Dillahunty, E. E. Mathes, J. M. Murphy and Laborers Lee Green, Arbell Jacobs and H. L. Pullman employment respectively on December 25, 1954 and January 1, 1955 under the current agreements.

2. That accordingly The Kansas City Southern Railway be ordered to make these employes whole by additionally compensating each of them in the amount of 8 hours at the time and one-half rate on each of the aforesaid dates.

EMPLOYES' STATEMENT OF FACTS: The Kansas City Southern Railway Company, hereinafter referred to as the carrier, made the election to regularly create and specifically designate in the roundhouse at Shreveport, Louisiana, a work week of 40 hours consisting of 5 days of 8 hours each with 2 consecutive days off in each 7. The consist of the force named in statement of dispute, including the hours of shifts, the days of work and the off days thereof are comprehensively defined in copy of Memorandum submitted herewith and identified as Exhibit A.

The carrier, nevertheless, ultimately elected to arbitrarily deprive Machinists Dillahunty, Murphy, Brown, Mathes, Cobb and Laborers Green, Jacobs and Pullman of working one of their awarded stipulated days of work in work weeks beginning December 19 and 26, namely Saturday (Christmas) December 25, 1954, and Saturday (New Year's) January 1, 1955. This is in face of the fact too that such action had not previously occurred between the effective date of the current agreement (September 1, 1949) or otherwise under Article II, Section 1 of the August 21, 1954 applicable agreement prior to September 1, 1954.

This dispute has been handled with the carrier up to and including the highest officer designated thereby to handle such disputes with the consequence that said officer has declined to adjust it.

POSITION OF EMPLOYEES: It is submitted on the basis of the facts above referred to that these employe claimants certainly possessed a work week of 40 hours consisting of 5 days of 8 hours each with 2 consecutive days

The organization, in its only communication to the undersigned in this matter, stated:

> "Prior to August 31, 1954, all employes who were assigned roundhouse or service required jobs worked such holidays as fell on one of their regular assigned work days."

Carrier does not concur in the foregoing statement and therefore takes exception thereto because of its generality, indefiniteness and lack of verification.

If work was required on the holiday for which the company was required to pay penalty rate, the regular assigned man was used; but if the service did not require work on such holiday, the job was blanked.

In part 2 of the claim, the organization requests the Board

> ". . . to make these employes whole by additionally compensating each of them in the amount of 8 hours at the time and one-half rate . . ."

That request is for such pay in addition to the 8 hours at pro rata rate they received for not working on the holiday.

While it is the carrier's position they are not due any additional pay at all under the rules, and that such should be the finding of this Board, certainly by no stretch of the imagination would they be due time and one-half in addition to the pro rata holiday pay.

This Board has on numerous occasions held that where the work has been performed, which is not the case here, the proper rate is one and one-half the pro rata rate, but where the employe is entitled to a sustaining award wihout performing the actual work, the proper rate is what the employe would earn at the straight time or pro rata rate.

Under the Transportation Act, railroads are admonished by law to operate in an efficient and economical manner. They cannot so operate if required to employ forces not needed or to pay two days and one half for one day not worked. Claim here before the Board is nothing more than an effort to force the carrier to work unnecessary personnel on holidays. In these circumstances a denial award is clearly in order if the Board should take jurisdiction and pass on the merit of the dispute.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Claimants are eight employes who are the owners of regular assignments as machinists and laborers in carrier's shops at Shreveport, Louisiana. They were notified by bulletin that they would not be used on December 25, 1954 and January 1, 1955 on account of such days being legal holidays under the controlling agreement. A skeleton force only was used on these days, the senior machinist and senior laborer on each shift desiring to work being held for service.

It is the contention of the claimants that they were regularly assigned to work 40 hours each week on 7-day positions and that the 40 Hour Week Agreement was violated when they were not permitted to work on December 25, 1954 and January 1, 1955, which they would have done but for the fact that they were legal holidays.

Carrier asserts that the appeal to this Board was not timely made for the reason that only a notice of intent to file an appeal was lodged with the Board within the nine months prescribed by Article V (c) of the agreement of August 21, 1954. The notice of intent to file an appeal lodges jurisdiction of the dispute with the Board. The filing of a submission with the Board is not a jurisdictional step. Award 2285.

The organization's primary contention is that the failure to use claimants on the two holidays for which claim is made is a violation of Rule 1 A (d), Forty Hour Week Agreement, which provides.

> "On positions which are filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

The foregoing rule means only that positions necessary to be filled seven days a week, any two days may be assigned as rest days with the presumption in favor of Saturday and Sunday. The bulletining of positions in accordance with this rule is not a guarantee that they will be worked five days a week. Standing alone, the rule means that if the positions are worked the employes assigned to them will perform the work.

In resolving the claim before us, consideration should be given to the situation existing prior to the negotiation of the agreement of August 21, 1954. At that time a holiday was considered an unassigned day, and even though it fell on a work day of an employe's work week, it could be blanked without penalty or worked in accordance with carrier's operational needs. When employes were not used on a holiday, their work week was shortened by eight hours. The purpose of the agreement of August 21, 1954, was to insure a regular assigned employe his normal take home pay when a holiday fell on a day of his work week and carrier's operations did not require him to work the holiday. This is what was meant by Article II, Section 1, Agreement of August 21, 1954 wherein it was said in part:

> "Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a work day of the work week of the individual employe: * * *."

We point out also that the August 21, 1954 agreement provided for the payment of time and one-half for holiday work in addition to the eight hours' holiday pay provided for in Section 1, by the inclusion of Article II, Section 5, which states:

> "Nothing in this rule shall be construed to change existing rules and practices thereunder governing the payment for work performed by an employe on a holiday."

It is clear that it was the intention of the Agreement of August 21, 1954 to provide for the payment of eight hours at the pro rata rate to regularly assigned employes for holidays not worked and to leave in effect the provision for time and one-half pay for work performed on a holiday. It was still the province of the carrier to determine if an employe was needed on a holiday. If he was not used, he received eight hours' pay at the pro rata rate; if he was used, he received time and one-half in addition to the eight hours holiday pay at the pro rata rate.

If it had been the contention that all employes, or any class or group of them, was to work all holidays and to receive two and one-half times the pro rata for so doing, it would have been a simple matter to have said so in clear and unmistakable language. Such was clearly not the intent.

An examination of the findings and recommendations of Emergency Board No. 106, which was the forerunner of the Agreement of August 21, 1954, conclusively indicates that the foregoing interpretation is in line with the purposes which that Board had in mind. See Award 2169. The organization takes the position that it was the purpose of the August 21, 1954 Agreement to require all holidays to be worked which fall within claimants' work weeks and that they have been shortened eight hours at time and one-half rate when they were paid only eight hours at the pro rata rate for not working. It was clearly the intention of Emergency Board No. 106 and the Agreement of August 21, 1954, to provide that the regular assigned employes' take home pay in a work week containing a holiday which was blanked should be the same as a week in which there was no holiday. The agreement cannot reasonably be construed otherwise. We think the agreement provides for pay for 40 hours at the pro rata rate in a work week containing a holiday which is not worked, leaving the time and one-half rate to be applied in addition thereto if the employe is worked on the holiday. The holiday pay rule is personal to a regularly assigned employe because of his status as such. If he is working a position, regularly or temporarily, whose work week contains a holiday, any such employe owning a regular assignment is entitled to the benefit of the rule. See Awards 2169, 2212, 2246, 2254, 2281, 2282, 2297, 2298, 2299, 2300, 2301, 2302.

Under the foregoing interpretation of the rule, claimants were not entitled to work the holidays described in the claim and consequently their claim for eight hours at the time and one-half rate must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 26th day of November, 1956.

DISSENT OF LABOR MEMBERS TO AWARD 2325.

The majority's finding that the claimants were not worked on their regular assignments on Christmas and New Year's Day is an admission that the claimants possessed the right to work on that day.

The majority further finds that the assignments in question were, in effect, blanked. The assignments were not blanked; the claimants were denied the right to work the assignments in question and the agreement does not authorize the carrier to deny employes the right to work their regular assignments.

The majority's finding that there is nothing in the agreement which requires the carrier to work regularly assigned employes on holidays when their services are not needed ignores the right of the claimants to work a day coming within their regularly weekly assignment of 40 hours—established in accordance with Rule 1-A-(a) General covering the machinists and Section 2-A-(a) General covering the laborers of the controlling agreement.

The majority's finding that the purpose of what it terms the holiday rule was realized here by giving regularly assigned employes a holiday without a loss of take-home pay is in fact permitting the carrier to evade the terms of the agreement, under which the claimants would have received time and one-half had they not been denied their right to work on the instant holidays.

We are constrained to dissent from the erroneous findings and award of the majority.

Edward W. Wiesner
R. W. Blake
Charles E. Goodlin
T. E. Losey
George Wright