Award No. 1606
Docket No. 1510
2-IC-CM-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the carrier violated the current agreement when they did not allow Car Inspectors E. L. LaBruyere, A. T. Hilmes, and J. E. Wayland to work their assignment on Monday, January 1, 1951, at E. St. Louis, Illinois.

2. That in consideration therefore, the carrier be ordered to compensate these employes for eight (8) hours at the time and one-half rate at the prevailing hourly rate of pay for January 1, 1951.

EMPLOYES' STATEMENT OF FACTS: At E. St. Louis, Ilinois, the carrier maintains three (3) shifts of car inspectors in the train yards working seven (7) days per week. Their names and assignments are as follows:

"1st Shift—7:30 A. M.-3:30 P. M.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
D. W. Steger	x	R 1	R 1	x	x	x	x
N. Pathenos	x	x	x	x	x	R 1	R 1
D. R. Phillips, L. C.	x	x	x	x	x	o	o
E. E. Owen	x	x	x	x	x	R 2	R 2
W. E. Olson	x	R 2	R 2	x	x	x	x
F. Hyde	R 2	R 3	x	x	x	x	x
K. K. Owen	R 3	x	x	x	x	x	R 3
K. L. Robinson	x	x	x	R 4	R 3	x	x
L. Gabelman	x	x	x	x	x	R 3	o
S. Yanta	R 4	x	x	x	x	x	R 4
O. Slay	x	R 4	R 4	x	x	x	x

> We find in the rule a valid implication, and consider it to be a proper inference to draw from the language of the parties, that where there is no work of a position to be performed on a holiday, the Carrier may blank the position, on reasonable notice to the employe, but where the employe is required to work he is entitled to be paid at the rate of time and one-half. The requirement of reasonable notice is because the employe, in the absence thereof, may rely on the regular schedule of work which amounts to a call and if he reports for service and is not used, is allowed one day's pay by Rule 7."

and Third Division Award 5668 reading in part:

> "Claimant was regularly assigned by bulletin Saturday through Wednesday; and the holiday fell on a Monday. The assignment does not, in so many words, say that holidays are not working days; but such is the ordinary understanding of what a holiday is. Since the Agreement establishes holidays, Claimant's assignment did not require him to report for work within the meaning of Rule 47 [Reporting and Not Used Rule]; and he was not entitled to give himself a call under Rule 55 [Notified or Called Rule]."

In handling this claim on the property, the employes have advanced no rule to support their claim. The reason for that is, there is no rule to support them. However, should the position of the employes be sustained, your Board would go beyond its function of interpreting contracts as delegated by the Railway Labor Act, and in effect write a new rule into the agreement. In this connection see First Division Awards 7057 and 14566, Second Division Award 1474, Third Division Awards 389, 871, 1230, 2612, 2622, 3407, 4763 and 5079, Fourth Division Award 501, and other similar holdings in awards of all four Divisions of the National Railroad Adjustment Board which are too numerous to cite here.

Our summarized position is that there was no guarantee in the agreement to work employes on holidays before the forty-hour week agreement was effective and there has been no guarantee established by the inauguration of the forty-hour week agreement, either by specified rule or implication. (See Third Division Awards 1609, 383, 389, 1257, 1568; and First Division Award 5826.) In fact, this organization has recognized before the National Mediation Board that the rights of the parties with respect to holiday work which existed prior to September 1, 1949, has not been changed by the agreement as revised effective September 1, 1949.

There is no basis for the claim, and the carrier respectfully requests it be denied.

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 LaBruyere, Hilmes, and Wayland, assigned to the third shift as car inspectors at the carrier's East St. Louis train yards, had work weeks in 7-day service which began on Friday, Saturday, and Thursday, respectively; ended on Tuesday, Wednesday, and Monday, respectively; and therefore included Mondays as a work day for all three men. On Sunday, December 31, 1950, they were orally notified by their foreman that there would

be no work for them Monday night, January 1, 1951, a legal holiday and one of seven holidays specified in Rule 3(B) of the parties' effective agreement as requiring time-and-one-half rates of pay for work performed thereon.

From the record it appears also that, in bulletining the claimants' positions, the carrier specified the above-mentioned days of their work weeks but did not specify that the positions would or would not work on one or more holidays.

The issue posed by the claim before us here is clear: Is there anything in the agreement(s) governing the parties' relations which requires the carrier to work on such holidays employes assigned to work-weeks that include such holidays?

In determining this issue we note first that there is in the parties' agreement(s) no specific rule directly guaranteeing five days of work per week. We are then led to inquire whether other rules, including those of the 40-hour week agreement (which was incorporated into the parties' rules agreement as of September 1, 1949), can reasonably be interpreted, separately or collectively, as providing such a guarantee.

We do not find that any or all of the 40-hour week rules imply a strict guarantee of five days of work per week for any employe. These rules provided for the reduction of work weeks from six or seven days to five; and they provided for implementing this reduction. But they do not appear to say, directly or indirectly, that an employe assigned to a five-day work week must be used every day of such work week under all circumstances.

When the carrier bulletined the positions worked by the claimants, the work weeks involved were specified, and there was no mention of whether holidays within these work weeks would or would not be worked. The substance of the organization's contention is that such bulletining had the effect of guaranteeing five days of work per week; not to work employes on holidays would be to change the nature of the bulletined positions and would require abolishment of the positions and re-bulletining of new ones in which the possibility of not working on holidays was specified.

We do not think this position is tenable. For us to rule otherwise would be unreasonably to hold that, without the kind of bulletining contended for by the organization, the carrier has no alternative to working its employes on all holidays at overtime rates of pay. There is no compelling evidence of record that the parties contemplated such a restriction on the carrier's alternatives. To us their agreement means that in respect to working employes on holidays, the carrier has two alternatives: It may work them, or it may not. But if it chooses the former alternative, it incurs a penalty in the form of paying time-and-one-half rates for the holiday hours worked.

Turning finally to the agreements in effect before September 1, 1949 (Rule 3 of the agreement effective April 1, 1935; the modification of this Rule 3 effective December 16, 1943; and the Memorandum of Agreement of February 18, 1944), we find as follows: (1) A literal interpretation of these agreements, as written, might lead to the conclusion that the parties intended to guarantee holiday (as well as Sunday) work for employes in 7-day service whose work weeks included those days. (2) Much doubt as to the validity of this conclusion is raised, however, by the subsequent (pre-1949) efforts of the organization to get the carrier to agree on a plan for rotating Sunday and holiday work among employes on 7-day assignments. (3) In any case the status of 7-day "continuous service" positions was altered by the 40-Hour Week Agreement. Under the latter, positions "necessary to the continuous operation of the carrier" were not obligated to work seven days under any and all circumstances. (4) The 40-Hour Week Agreement established no guarantee of minimum hours or days of work in agreements

where none previously existed. (5) Having found no compelling evidence of such a guarantee before the advent of the forty-hour, five-day work week, we find none now. (6) We therefore conclude that the instant claim merits denial.

Our finding here in respect to holidays is not to be interpreted as embracing other, ordinary days within bulletined work weeks. Our decision here is confined wholly to the facts, issues, and agreement provisions involved in the instant case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December, 1952.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1606

The undersigned dissent from the majority in Award No. 1606 of the Second Division of the National Railroad Adjustment Board.

The regular bulletined hours of the third shift train yard force are 11:30 P. M. to 7:30 A. M. daily. Under the existing agreement Sundays and Holidays are included within the regular bulletined hours of all train yard forces.

The instant employes were assigned to the third shift 11:30 P. M. to 7:30 A. M. five days a week, one of the days being Monday. The claim of the employes should have been sustained inasmuch as the instant Holiday fell on a Monday—one of the regularly assigned working days of the instant employes.

/s/ Edward W. Wiesner

/s/ R. W. Blake

/s/ A. C. Bowen

/s/ T. E. Losey

/s/ George Wright