Award No 2070

Docket No. 1971

2-UT-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the agreement Coach Cleaners E. M. Kitchens, W. A. Griffith and W. L. McGahee were improperly denied the right to work their regular assignment at 7:00 A. M. to 3:00 P. M. and 3:00 P. M. to 11:00 P. M. shifts, Washington's Birthday, February 22, 1955.

2. That the Carrier be ordered to compensate each of these employes for 8-hours at time and one-half rate for February 22, 1955.

EMPLOYES' STATEMENT OF FACTS: It is submitted that Rule 1, Section 2 (d) of the current agreement is controlling, which for ready reference reads:

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

This rule covers seven day positions necessary under the 40-hour work week. The above-named claimants were assigned to work five days per week on seven day positions and such positions were created by the carrier by virtue of the fact that the work was necessary each day of the week for continuous operation of the Terminal. In support of the foregoing statement, the employes submit a copy of a letter, identified as Exhibit A, addressed to Mr. Y. L. Crumpton, under date of August 15, 1955, by Mr. H. E. McGowan. Mr. McGowan was the president of System Federation No. 121 and participated in the negotiating of the 40-Hour Week Memorandums of Agreement, dated July 26, 1949, and August 14, 1950, with the Union Terminal Company. It will be noted in Mr. McGowan's letter that he states:

> "Therefore, it was understood that men who were assigned to work Sundays would work every Sunday and every Holiday that came within their tour of duty except carmen assigned in station to repairing station trucks. This job was to be assigned Monday through Friday."

ployes was assigned to work on one of them regularly. Twelve other employes were assigned to work on various ones of them, but each was assigned to work regularly five days a week. Actually, all coach cleaner jobs were five-day jobs, staggered to meet the requirements of seven-day service.

The petitioner actually is not trying to apply, in this case, the old concept of a particular job which is essential to continuous operation, the way Award 1444 applied it. If that were the case, the petitioner would be contending that there had to be as many coach cleaners worked on Tuesday and Wednesday as were worked on Sunday. But there is no such claim or contention. Therefore, this cannot be anything but a claim that the carrier must work its entire regularly assigned force of coach cleaners on holidays, as if those days were not holidays.

There is no authority or basis for that contention. There is no requirement that they be paid the punitive rate unless they are worked, and claimants were not worked.

With specific reference to the holiday question, Second Division Awards 1472 (Edward F. Carter), and 1606 (Carroll R. Daugherty), are in point and controlling. The submissions by the carriers, as printed with the awards in those cases, cover the subject well, and this carrier refers the Board to them and requests that it study them carefully.

This case differs from them only in that it has much less merit to it than they did. For one thing, the Brotherhood relies on a reduction in force rule, which never constituted a guarantee, and has not been in the agreement since early 1949. For another thing, this case arose after and under the new national agreement's holiday rule, which was made on August 21, 1954, because the employes were going to stop the entire railroad industry, if the railroads did not agree to give them this holiday and others with pay.

People who are not familiar with the railroad industry would find it hard to believe that the Railroad Brotherhoods would be contending, now, that the agreement required the carriers **not** to give the employes this holiday with pay. But that is all there is to these claims.

For the reasons stated, the carrier requests that these claims 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.

The claimants were not worked on their regular assignments on Washington's Birthday, said day being a recognized holiday. The assignments in question were, in effect, blanked. No other employes were used to work the claimants' assignments on the date in question. Claimants each received one day's pay at straight time for the holiday not worked.

There is nothing in the agreement which requires the carrier to work regularly assigned employes on holidays when their services are not needed.

The purpose of the holiday rule was to give a regularly assigned employe a holiday without a loss of take-home pay. Such was realized here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2070

The majority's finding that "The Claimants were not worked on their regular assignments on Washington's Birthday" 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 Sec. 2(a) of Rule 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 Rule 2(d) of which the claimants would have received time and one-half had they not been denied their right to work on the instant Holiday.

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

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