Award No. 2320
Docket No. 2390
2-StLSF-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the applicable agreements the Carrier improperly compensated Machinist Roy C. Compton for the September 5, 1955 Labor Day Holiday, by granting him only five (5) hours' holiday pay.

2. That, accordingly, the Carrier be ordered to additionally compensate Machinist Roy C. Compton in an amount equivalent to three (3) hours' pay for the aforesaid holiday.

EMPLOYES' STATEMENT OF FACTS: Roy C. Compton, hereinafter referred to as the claimant, is employed by the St. Louis-San Francisco Railway Company, hereinafter referred to as the carrier, as a machinist at Wichita, Kansas. Claimant is regularly assigned on Monday through Friday from 7:00 P. M. to 3:00 A. M., with Saturday and Sunday as rest days.

The claimant was not required by the carrier to work on Monday, September 5, 1955, the Labor Day holiday. The carrier compensated the claimant in an amount equivalent to five (5) hours' pay for the holiday. The carrier has declined to grant the claimant eight (8) hours' pay at the pro rata hourly rate of the position to which the claimant is assigned for the Labor Day holiday.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that he has declined to adjust it.

The agreement effective January 1, 1945, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: Article II, Section 1 of the August 21, 1954, agreement reads as follows:

> "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

representatives share the carrier's view that it would be mutually advantageous to change the method of compensating employes for holiday work on a calendar day basis, and submitted herewith and identified as carrier's Exhibit B is copy of the carrier's letter June 22, 1956, addressed to the president and the secretary-treasurer of System Federation No. 22, together with copies of the two memoranda of understanding herein referred to.

The employe representatives have taken no definite action with respect to the carrier's letter of June 22, 1956, as evidenced by the latest communication from the federation dated September 10, 1956, copy of which is submitted herewith as carrier's Exhibit C. The union official signing the latter communication is also general chairman of the International Association of Machinists who handled the instant claim on the property.

I has been pointed out there is no specific exception in Rule 6(b) of the controlling agreement to provide for compensating employes for holiday work at time and one-half rate on a calendar day basis, nor does the rule provide that one method will be used in calculating an employe's compensation for work on rest days and another method used for calculating an employe's compensation on holidays. Compare Second Division Award 1485 where there was there involved a specific rule providing for time and one-half rate for holiday work to be calculated on a calendar day basis.

The governing rule does not, in the opinion of this carrier, require that it compensate employes for work on holidays on a calendar day basis, and it is clear from the record the carrier for almost two years has been seeking an understanding with employe representatives to change the past practice. Awards of the National Railroad Adjustment Board such as Third Division Awards 5166 and 6840 have held that "past practices under a rule on a specific subject that is clear and unambiguous does not change the rule itself and either Carrier can enforce or employes can require Carrier to enforce it according to its terms." That is what this carrier has been seeking to do to avoid claims of this character. Under holdings of the National Railroad Adjustment Board, it is the carrier's position that Rule 6 (b) is clear and unambiguous and that the carrier is free to enforce the rule as written, but in the interest of maintaining harmonious relations with its shop craft employes, the carrier has endeavored to work the matter out on the basis of a mutual understanding and there are, in the carrier's opinion, no basic or fundamental differences between the parties regarding the matter. The handling that the carrier has given the matter with its shop craft employes should not be construed as a waiver of the carrier's rights under the controlling agreement.

In view of the foregoing facts and circumstances, the employe representatives must share responsibility for the cause of the claim here presented and this individual claim should be denied or remanded for further handling on the property after the parties have concluded their handling with respect to the matter of changing the past practice of compensating employes for holiday work on a calendar day basis.

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 claimant, employed at Wichita, Kansas, was on September 5, 1955 a regularly-assigned hourly-rated employe within the intent and meaning of Article II, Section 1 of the August 21, 1954 National Agreement. His regular

work assignment was 7 P. M. to 3 A. M. Monday through Friday with rest days Saturday and Sunday. The September 5, 1955 Labor Day holiday fell on a work day of the work week of the claimant. He did not work on that holiday and was paid five (5) hours at the pro rata rate of pay. The claim here is for an additional three (3) hours at the pro rata rate of pay. The applicable part of the Agreement above-mentioned provides:

"ARTICLE II—HOLIDAYS

Section 1. 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 workday of the workweek of the individual employes:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays."

To apply this rule to the facts of this case, it is our view that the claimant here, a regularly assigned hourly rated employe, will be paid according to the calendar day upon which he begins work; viz: Monday when not a holiday; so having qualified in all respects for holiday pay under the National Agreement of August 21, 1954 he should receive the pay specified in that Agreement for holidays. To pay less would not give affect to the intention of the parties making that Agreement.

AWARD

Claim sustained per findings for three (3) hours at the pro rata rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

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