

Award No. 5629
Docket No. 5493
2-NOPB-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NEW ORLEANS PUBLIC BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement at New Orleans when two agreed-to paid holidays, namely, Washington's Birthday and Mardi Gras Day, both fell on February 22, 1966, and the Carrier compensated the below named employes for only eight (8) hours at the pro rata rate:

F. J. Arieux	L. Hauck
A. A. Armond	M. F. Heath
L. B. Aucoin	L. Kocke
T. E. Austin	M. G. LeBlanc
G. W. Becker	J. P. Marcev
F. J. Bondio	J. Poolych
E. W. Boos	M. J. Prattini
W. J. Beauregard	L. Quigley
W. S. Caillouette	S. C. Rousseau
C. S. Chenevert	W. J. Reuther
E. P. Duchmann	A. R. Russo
A. R. Findorff	J. P. Scavo
H. Fleetwood	I. F. Steudlein
W. C. Fowler	J. J. Tabony
G. Heindel	L. Vieages
M. J. Hoffman, Jr.	G. Welch
J. J. Hyatt	E. Weigand

2. That the Carrier compensate the above named Carmen for eight (8) hours each at the pro rata rate for the additional holiday.

EMPLOYEES' STATEMENT OF FACTS: From the time that the paid holiday agreement became effective the employes at New Orleans have always had Mardi Gras Day off with pay for eight (8) hours at the pro rata rate when this holiday fell on one of their regular work days. The employes at New Orleans have always had Washington's Birthday off with pay for eight (8) hours at the pro rata rate when this holiday fell on one of their regular work days.

On February 22, 1966, both of these regularly paid holidays fell on the same day. February 22, 1966, was a regular work day for the Claimants. Carrier compensated the Claimants for only eight (8) hours each at the pro rata rate for February 22, 1966, which was actually two regularly paid holidays.

This dispute has been handled in accordance with the agreement with all Carrier officers authorized to handle disputes, with the result that all of them declined to adjust it. A copy of my letter dated April 20, 1966 is attached and identified as Exhibit A. A copy of my last appeal letter to Mr. Dumas, dated October 2, 1966, is attached and identified as Exhibit B. Mr. Dumas replied under date of October 31, 1966, a copy of which is attached and identified as Exhibit C.

The agreement effective March 16, 1947, as subsequently amended, including the agreement of August 21, 1954 as amended by the agreement effective July 1, 1960, is controlling.

POSITION OF EMPLOYEES: It is submitted that the current agreement was violated.

The National Agreement Signed August 21, 1954, as Amended, effective July 1, 1960, pertinent part reading:

"ARTICLE III. HOLIDAYS

Section 1. Subject to the qualifying requirements applicable to regularly assigned employes contained in Section 3 hereof, 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:

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

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."

* * * * *

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.

Parties to said dispute waived right of appearance at hearing thereon.

Article II--Holidays, Agreement of August 21, 1954 (adopted on this property on August 9, 1955), enumerates Washington's Birthday and Decoration Day in Section 1, as two of seven (7) days for holiday observance, subject to the provisions that:

"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."

The holiday schedule in effect on the property, prior to the adoption of the August 21, 1954 Agreement, did not recognize Decoration Day as a holiday, but did provide for observance of Washington's Birthday and of Mardi Gras Day as a holiday of local importance and significance.

Mardi Gras Day continues to be observed as a holiday at New Orleans, but not Decoration Day. The effect, therefore, is to substitute Mardi Gras Day for Decoration Day in Section 1, Article II of the August 21, 1954 Agreement for observance on the calendar day of occurrence, as is true of other enumerated holidays.

Mardi Gras Day and Washington's Birthday occurred on the same calendar day in 1966, a workday of the workweek for each employe covered by the claim at issue in this docket. Each of said employes qualified for the holiday pay provided in Section 1 in accordance with the terms and provisions of Section 3.

Accordingly, all employes covered by the subject claim, who performed no service that day, were paid eight (8) hours' pay at the pro rata hourly rate of the position to which assigned on February 22, 1966. Claim is for an additional eight (8) hours' pay on the same basis.

Assuming, in the absence of proof, that there is no past practice on which the parties to the dispute can rely, the Board sees some merit to the claim. Carrier affirmatively states in its written submission, however, that "no claim such as this has been made in the past when Mardi Gras Day and Washington's Birthday fell on the same day."

The failure to file a time claim in an isolated or in rare instances is no evidence of agreements or practices that were in effect when the August 21, 1954 Agreement was adopted. The same may be said of agreements and holiday practices since.

Carrier further argues "there are no rules in the existing agreements that provide for two (2) days' Holiday Pay when Washington's Birthday and Mardi Gras Day fall on the same day."

Mardi Gras Day, as earlier pointed out herein, is not one of the holidays enumerated in Section 1, Article II, August 21, 1954 Agreement. Washington's Birthday is one of seven (7) enumerated paid holidays. Decoration Day, for which Mardi Gras Day was substituted, is another.

Carrier and its Employes have not agreed, by rule or in practice, that the Carrier may offset a substituted holiday of such local importance as is Mardi Gras Day against a holiday not substituted for in Section 1 when, fortuitously, they both fall, as here, on the same calendar day.

Carrier's argument that an implied intent to apply the rule in the manner for which it contends is to be found in National Mediation Board Case No. A-4336 has been considered. The recommendations of the Presidential Emergency Board in that case were "influenced by the desirability of making it possible for the employes to maintain their normal take-home pay in weeks during which a holiday occurs" (consistent with the practice being followed at that time in American industry), but subject, nevertheless, to some variations and inconsistencies in connection with the days of the week constituting the assigned rest days, which the Emergency Board did not find "to be disturbing."

We find that some such variation or inconsistency, not mentioned in the Emergency Board's report, can be followed in this dispute without "need to be disturbing" in connection with the rare occasion when Mardi Gras Day falls on the same workday of the workweek, of another holiday recognized and observed as one of the holidays enumerated in Section 1, Article II.

It is to be expressly noted, however, that the Award hereafter entered is not for general application in another dispute of far more reaching importance that involves an interpretation of the August 21, 1954 Agreement.

AWARD

Claim (1) sustained.

Claim (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1969.